रजिस्ट्री सं० डी० एल-33001/99

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भारत का राजपत्र
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सं. 21] नई दिल्ली, शनिवार, मई 24, 2003/ज्येष्ठ 3, 1925
No. 21] NEW DELHI, SATURDAY, MAY 24, 2003/JYAISTHA 3, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त एवं कम्पनी कार्य मंत्रालय

(राजस्व विभाग)

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 10 अप्रैल, 2003

का. आ. 1480.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10 (23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2003-2004, 2004-2005 और 2005-2006 तक के लिए नीचे पैरा 3 में उल्लिखित उद्यमों/औद्योगिक उपक्रम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि:—

(i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम:—

(क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है, और

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है, अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है:—

मैसर्स टाटा टेलिसर्विसस लि., दसवीं मंजिल, टावर 1, जीवन भारती 124, कनॉट सर्कस, नई दिल्ली-110001 को निदेशक (वीएस), दूरसंचार के माध्यम से कार्यरत भारत के राष्ट्रपति और आवेदक कम्पनी के मध्य लाइसेंस करार संख्या 18-57/2001—बी एस-II/दिल्ली दिनांक 31-8-2001,18-59/2001—बी एस-II/कर्नाटक 31-8-2001, 18-58/2001—बी एस-II/गुजरात दिनांक 31-8-2001 और 18-61/2001—बी एस-II/तमिलनाडु दिनांक 31-8-2001 के अन्तर्गत दिल्ली, गुजरात, कर्नाटक एवं तमिलनाडु, दूरसंचार सर्किलों में टेलिफोन सर्विसस प्रदान करने वाली उनकी परियोजना के लिए (फा.सं. 205/58/2002-आयकर नि.-II)।

[अधिसूचना संख्या 81/2003/फा.सं. 205/58/2002-आयकर नि-II]

संगीता गुप्ता, निदेशक (आयकर नि-II)

MINISTRY OF FINANCE AND COMPANY AFFAIRS

(Department of Revenue)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 10th April, 2003

S. O. 1480.—It is notified for general information that enterprise/industrial undertaking, listed at para (3) below has been approved by the Central Government for the purpose of Section 10 (23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2003-2004, 2004-2005 and 2005-2006.

2. The approval is subject to the condition that—

(i) The enterprise/industrial undertaking will conform to and comply with the provisions of Section 10 (23G) of the Income-tax Act, 1961, read with Rule 2E of the Income-tax Rules, 1962;

(ii) The Central Government shall withdraw this approval if the enterprise/industrial undertaking:—

(a) ceases to carry on infrastructure facility; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of Rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (7) of Rule 2E of the Income-tax Rules, 1962.

3. The enterprise/industrial undertaking approved is—M/s. Tata Teleservices Ltd., 10th Floor, Tower 1, Jeevan Bharati, 124, Connaught Circus, New Delhi-110001 for their project of providing basic telephone services in the Delhi, Gujarat, Karnataka and Tamil Nadu Telecom Circles under the license agreement Nos. 18-57/2001-BS-II/DELHI dated 31-8-2001, 18-59/2001-BS-II/KARNATAKA dated 31-8-2001, 18-58/2001-BS-II/GUJARAT dated 31-8-2001, and 18-61/2001-BS-II/TAMIL NADU dated 31-8-2001 between President of India, acting through Director (BS), Department of Telecommunication and the applicant company (F.No. 205/58/2002-ITA-II).

[Notification No. 81/2003/F.No. 205/58/2002-ITA-II]

SANGEETA GUPTA, Director (ITA-II)

आदेश

नई दिल्ली, 28 अप्रैल, 2003

स्टाम्प

का. आ. 1481.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा आवास और शहरी विकास निगम लिमिटेड, नई दिल्ली को मात्र आठ करोड़ चौरासी लाख तीस हजार रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त निगम द्वारा जारी किए जाने वाले निम्नलिखित रूप से वर्णित प्रोमिसरी नोटों के स्वरूप वाले बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभार्य है :—

(क) मात्र दो सौ पचास करोड़ रुपये के समग्र मूल्य के 1 से 2500 तक की विशिष्ट संख्या वाले 7.60 प्रतिशत हुडको कराधेय बंधपत्र (एचबी xxvi शृंखला);

(ख) मात्र तीन करोड़ पचास लाख रुपए के समग्र मूल्य के 1 से 35 तक की विशिष्ट संख्या वाले 6.45 प्रतिशत हुडको कराधेय बंधपत्र (एचबी xxvii शृंखला);

(ग) मात्र बत्तीस करोड़ रुपये के समग्र मूल्य के 1 से 320 तक की विशिष्ट संख्या वाले 7.10 प्रतिशत हुडको कराधेय बंधपत्र (एचबी xxviii शृंखला);

(घ) मात्र एक सौ अड़तालीस करोड़ बीस लाख रुपये के समग्र मूल्य के 1 से 1482 तक की विशिष्ट संख्या वाले 7.40 प्रतिशत, 7.60 प्रतिशत, 7.80 प्रतिशत हुडको कराधेय बंधपत्र (एचबी xxix-ए, बी और सी शृंखला);

(ङ) मात्र एक सौ करोड़ रुपए के समग्र मूल्य के 1 से 1000 तक की विशिष्ट संख्या वाले 7.40 प्रतिशत हुडको कराधेय बंधपत्र (एसडी-I शृंखला);

(च) मात्र चार सौ सत्तर करोड़ रुपये के समग्र मूल्य के 1 से 4700 तक की विशिष्ट संख्या वाले 7.90 प्रतिशत हुडको कराधेय बंधपत्र (एसडी-II शृंखला);

(छ) मात्र एक सौ पैंतालीस करोड़ नब्बे लाख रुपए के समग्र मूल्य के 1 से 1459 तक की विशिष्ट संख्या वाले 7.70 प्रतिशत हुडको कराधेय बंधपत्र (एसडी-III शृंखला);

(ज) मात्र पचास करोड़ रुपये के समग्र मूल्य के 1 से 500 तक की विशिष्ट संख्या वाले 7.90 प्रतिशत हुडको कराधेय बंधपत्र (एसडी-IV शृंखला)।

[सं. 18/2003-स्टाम्प/फा. सं. 33/16/2003-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 28th April, 2003

STAMPS

S. O. 1481.—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Housing & Urban Development Corporation Limited, New Delhi to pay consolidated stamp duty of rupees eight crore eighty four lakh thirty thousand only chargeable on account of the stamp duty on bonds in the nature of promissory notes described as—

(a) 7.60% HUDCO Taxable Bonds (HB XXVI-Series) bearing distinctive numbers from 1 to 2500 aggregating to rupees two hundred fifty crore only;

(b) 6.45% HUDCO Taxable Bonds (HB XXVII-Series) bearing distinctive numbers from 1 to 35 aggregating to rupees three crore fifty lakh only;

(c) 7.10% HUDCO Taxable Bonds (HB XXVIII-Series) bearing distinctive numbers from 1 to 320 aggregating to rupees thirty two crore only;

(d) 7.40%, 7.60%, 7.80% HUDCO Taxable Bonds (HB XXIX-A, B & C-Series) bearing distinctive numbers from 1 to 1482 aggregating to rupees one hundred forty eight crore twenty lakh only;

(e) 7.40% HUDCO Taxable Bonds (SD-I Series) bearing distinctive numbers from 1 to 1000 aggregating to rupees one hundred crore only;

(f) 7.90% HUDCO Taxable Bonds (SD-II Series) bearing distinctive numbers from 1 to 4700 aggregating to rupees four hundred seventy crore only;

(g) 7.70% HUDCO Taxable Bonds (SD-III Series) bearing distinctive numbers from 1 to 1459 aggregating to rupees one hundred forty five crore ninety lakh only;

(h) 7.90% HUDCO Taxable Bonds (SD-IV Series) bearing distinctive numbers from 1 to 500 aggregating to rupees fifty crore only.

to be issued by the said corporation.

[No. 18/2003-STAMP/F. No. 33/16/2003-ST]

R. G. CHHABRA, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 8 मई, 2003

का. आ. 1482.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970 के खंड 3 के उपखण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, की धारा 9 की उपधारा (3) के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा निम्नलिखित सारणी के कालम (2) में उल्लिखित व्यक्तियों को उक्त सारणी के कालम (3) में उल्लिखित व्यक्तियों के स्थान पर कालम (1) में उल्लिखित राष्ट्रीयकृत बैंकों के निदेशक के रूप में तत्काल प्रभाव से अगले आदेश तक के लिए नामित करती है।

सारणी

बैंक का नाम	प्रस्तावित व्यक्ति का नाम	विद्यमान निदेशकों का नाम
1	2	3
केनरा बैंक	श्रीमति देवकी पुथुकृष्णन, क्षेत्रीय निदेशक, भारतीय रिजर्व बैंक, बंगलोर।	श्री एम० के० भट्टाचार्य सी०जी०एम० निरीक्षण विभाग, भारतीय रिजर्व, बैंक, मुम्बई।
बैंक आफ महाराष्ट्र	श्रीमती फुल्लन कुमार, प्रधानाचार्य, कृषि बैंकिंग महाविद्यालय, भारतीय रिजर्व बैंक, पुणे।	श्री डी०पी०एस० राठौर, क्षेत्रीय निदेशक, भारतीय रिजर्व बैंक, चंडीगढ़।

[सं. एफ. 9/9/2003-बीओ-I]

रमेश चन्द, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 8th May, 2003

S. O. 1482.—In exercise of the powers conferred by clause (c) of Sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, hereby nominates the persons specified in column (2) of the Table below as Directors of the Nationalised Banks specified in column (1) thereof in place of the persons specified in column (3) of the said Table, with immediate effect and until further orders:—

TABLE

Name of the bank	Name of person proposed	Name of the existing directors
1	2	3
Canara Bank	Smt. Devki Muthukrishnan, Regional Director, RBI, Bangalore	Shri M. K. Bhattacharya, CGM, Inspection Department, RBI, Mumbai.
Bank of Maharashtra	Smt. Phulan Kumar, Principal, College of Agricultural Banking, RBI, Pune.	Shri D.P.S. Rathore, Regional Director, RBI, Chandigarh

[F.No. 9/9/2003-B.O.-I]

RAMESH CHAND, Under Secy.

नई दिल्ली, 9 मई, 2003

का० आ० 1483.—रुग्ण औद्योगिक कंपनी (विशेष उपबंध) अधिनियम, 1985 की धारा 6 की उपधारा (2) के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा डा० जे० के० बागची को 1-4-2003 से 30-6-2003 तक तीन महीने की अवधि तक अथवा ए आई एफ आर की समाप्ति तक अथवा अगला आदेश होने तक, जो भी पहले हो, के लिए औद्योगिक तथा वित्तीय पुनर्निर्माण अपीलीय प्राधिकरण के सदस्य के रूप में पुनर्नियुक्त करती है।

[फा० सं० 20(2)2002-आई एफ-II(II)]

एम. के. मल्होत्रा, अवर सचिव

New Delhi, the 9th May, 2003

S. O. 1483.—In pursuance of the powers conferred by Sub-section (1) of Section 5 read with Sub-section (2) of Section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985, the Central Government hereby re-appoints Dr. J.K. Bagchi, as Member of the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) for a further period of three months with effect from 1-4-2003 upto 30-6-2003 or till the abolition of AAIFR or until further orders, whichever is earlier.

[F. No. 20(2) 2002-IF.II(II)]

M.K. MALHOTRA, Under Secy

नई दिल्ली 9 मई, 2003

का० आ० 1484.—रुग्ण औद्योगिक कंपनी (विशेष उपबंध) अधिनियम, 1985 की धारा 6 की उपधारा (2) के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा न्यायमूर्ति जे० बी० गोयल को 1-4-2003 से 30-6-2003 तक तीन महीने की अवधि तक अथवा ए ए आई एफ आर की समाप्ति तक अथवा अगला आदेश होने तक, जो भी पहले हो, के लिए औद्योगिक तथा वित्तिय पुनर्निर्माण अपीलीय प्राधिकरण के सदस्य के रूप में पुनर्नियुक्त करती है।

[फा० सं० 20(2)2002-आई एफ-II(I)]

एम० के० मल्होत्रा, अवर सचिव

New Delhi, the 9th May, 2003

S. O. 1484.—In pursuance of the powers conferred by Sub-section (1) of Section 5 read with Sub-section (2) of Section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985, the Central Governemnt hereby re-appoints Justice J. B. Goel as Chairman of the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) for a further period of three months with effect from 1-4-2003 upto 30-6-2003 or till the abolition of AAIFR or until further orders, whichever is earlier.

[F. No. 20(2) 2002-IF.II(I)]

M.K. MALHOTRA, Under Secy.

नई दिल्ली, 9 मई, 2003

का.आ. 1485.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्द्वारा घोषणा करती है कि बैंककारी विनियमन अधिनियम, 1949 की धारा 15 की उपधारा (1) के उपबंध बैंकों, जहां तक उनका मूर्त आस्तियों द्वारा व्यय न किए गए माने जा रहे भारतीय शास प्राप्त लेखापाल संस्थान द्वारा जारी लेखा मानक 22 को अनुपालन संबंधी आस्थगित कर आस्तियों के व्यवहार का संबंध है, पर लागू नहीं होंगे।

[फा. सं. 10/6/2003-बी ओ ए]

डी० चौधरी, अवर सचिव

New Delhi, the 9th May, 2003

S.O. 1485.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949) the Central Government, on the recommend tion of Reserve Bank of India, hereby declares that the provisions of Sub-section (1) of Section 15 of the Banking Regulation Act, 1949 shall not apply to the banks in so far as treatment of the Deferred Tax Assets arising on compliance with Accounting Standard 22 issued by the Institute of Chartered Accountants of India being treated as expenditure not represented by tangible assets.

[F.No. 10/6/2003-BOA]

D. CHAUDHURY, Under Secy.

संचार एवं सूचना प्रौद्योगिकी मंत्रालय

(डाक विभाग)

डाक जीवन बीमा निदेशालय

नई दिल्ली, 24 अप्रैल, 2003

का. आ. 1486.—महानिदेशक डाक, डाकघर बीमा निधि नियमावली के नियम 10 के तहत प्रदत्त शक्तियों का प्रयोग करते हुए और 31-03-2001 की स्थिति के अनुसार डाकघर बीमा निधि की परिसम्पत्तियों तथा देयताओं के बीमांकिक मूल्यांकन के आधार पर डाक जीवन बीमा पालिसियों के, मृत्यु अथवा परिपक्वता के कारण दावे बनने पर 31-03-2001 को समाप्त हुए वर्ष के लिए निम्नलिखित दरों पर साधारण प्रतिवर्ती बोनस की घोषणा करते हैं:—

बीमा पॉलिसी का प्रकार	बोनस की दर
(क) आजीवन बीमा	
(i) चालू पॉलिसी	बीमित राशि के प्रति हजार के लिए 95/- रु.
(ii) वर्ष के दौरान दावा	बीमित राशि के प्रति हजार के लिए 95/- रु. तथा प्रति पॉलिसी अधिकतम 1000/- रुपये की सीमा तक 10,000/- रुपये की बीमित राशि की प्रति पॉलिसी पर 25/- रूपये टर्मिनल बोनस
(ख) बंदोबस्ती बीमा	
(i) चालू पॉलिसी	बीमित राशि के प्रति हजार के लिए 77/-रु.
(ii) वर्ष के दौरान दावा	
(क) पॉलिसी की अवधि 20 वर्ष से कम होने पर	बीमित राशि के प्रति हजार के लिए 77/- रु.
(ख) पॉलिसी की अवधि 20 वर्ष से अधिक और 20 वर्ष के बराबर होने पर	बीमित राशि के प्रति हजार के लिए 76/- रु. तथा प्रति पॉलिसी अधिकतम 1000/- रुपये की सीमा तक 10,000/- रुपये की बीमित राशि की प्रति पॉलिसी पर 25/- रुपये टर्मिनल बोनस
(ग) प्रत्याशित बंदोबस्ती	सभी पॉलिसियों के लिए बीमित राशि के प्रति हजार के लिए 70/- रु.
(घ) परिवर्तनीय मियादी बीमा	बीमे की संबंधित श्रेणी हेतु संबंधित अवधि के लिए उपर्युक्त के अनुसार बोनस।

2. 01-04-2001 से 31-12-2003 की अवधि के दौरान परिपक्वता अथवा मृत्यु के कारण उत्पन्न हुए सभी दावों के लिए ऊपर

उल्लिखित दरों पर अंतरिम बोनस भी देय होगा (01-04-2001 को अथवा इसके बाद जारी की गई पॉलिसियों के संदर्भ में बीमा के प्रथम पॉलिसी वर्ष सहित)।

3. बोनस की ऐसी राशि, जिसमें 50 पैसे अथवा इससे अधिक का अंश अंतर्ग्रस्त है, को अगले उच्चतर रुपए में पूर्णांकित कर दिया जाएगा और 50 पैसे से कम के अंश की उपेक्षा कर दी जाएगी।

4. इसे वित्त सलाह (डाक) की डायरी सं. 206/एफ.ए./2003 दिनांक 23-4-2003 के जरिए प्राप्त उनकी सहमति से जारी किया जाता है।

[सं. 4-1/2003-एल आई]

वी. पति, उप महाप्रबंधक

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Post)

DIRECTORATE OF POSTAL LIFE INSURANCE

New Delhi, the 24th April, 2003

S.O. 1486.— In exercise of powers conferred on him vide Rule 10 of Post Office Insurance Fund Rules and on the basis of actuarial valuation of the assets and liabilities of Post Office Insurance Fund as on 31-03-2001, the Director General, Posts, is pleased to declare a Simple Reversionary Bonus for the year ending 31-03-2001 on the Postal Life Insurance Policies on their becoming claims, due to death or maturity at the following rates :

Type of Insurance Policy	Rate of Bonus
(A) Whole Life Assurance	
(i) Continuing Policy	Rs. 95/- per thousand of sum a ssured
(ii) Claim during the year	Rs. 95/- per thousand of sum assured plus terminal bonus of Rs. 25/- per policy of sum assured of Rs. 10,000/- subject to maximum of Rs. 1,000/- per policy.
(B) Endowment Assurance	
(i) Continuing Policy	Rs. 77 per thousand of sum assured
(ii) Claim during the year	
(a) Policy term less than 20 years	Rs. 77 per thousand of sum assured
(b) Policy term more than 20 years and equal to 20 years	Rs. 76 per thousand of sum assured plus terminal bonus of Rs. 25 per policy of sum assured of Rs. 10,000 subject to maximum of Rs. 1,000 per policy.
(c) **Anticipated Endowment**	Rs. 70 per thousand of sum assured for all policies.
(d) **Convertible Term Assurance**	To attract bonus for the respective period for the respective class of insurance as above.

2. Interim Bonus at the rates mentioned above will also be payable for all claims arising during to maturity or death during the period from 01-04-2001 to 31-12-2003 (including first policy year of assurance in respect of policies issued on or after 01-04-2001.)

3. The amount of Bonus involving a fraction of 50 paise or more shall be rounded off to the next higher rupee and fraction below 50 paise shall be ignored.

4. This issues with the concurrence of Finance Advice (Postal) vide their Diary No. 206/FA/2003 dated 23-04-2003.

[No. 4-1/2003-LI]

V. PATI, Dy. General Manager.

नई दिल्ली, 29 अप्रैल, 2003

का. आ. 1487.—महानिदेशक डाक, डाकघर बीमा निधि नियमावली के नियम 10 के तहत प्रदत्त शक्तियों का प्रयोग करते हुए और 31-03-1998 की स्थिति के अनुसार ग्रामीण डाकघर बीमा निधि की परिसम्पत्तियों तथा देयताओं के बीमांकिक मूल्यांकन के आधार पर ग्रामीण डाक जीवन बीमा पालिसियों के, मृत्यु अथवा परिपक्वता के कारण दावे बनने पर 31-03-1998 को समाप्त हुए वर्ष के लिए निम्नलिखित दरों पर साधारण प्रतिवर्ती बोनस की घोषणा करते हैं:—

बीमा पॉलिसी का प्रकार	बोनस की दर
(i) आजीवन बीमा	बीमित राशि के प्रति हजार के लिए 60/- रु.
(ii) बंदोबस्ती बीमा और प्रत्याशित बंदोबस्ती बीमा	बीमित राशि के प्रति हजार के लिए 50/- रु.

2. बोनस की उपर्युक्त दर वर्ष 1996-97 के लिए भी लागू होगी क्योंकि इस निदेशालय की अधिसूचना सं. 5-2/2001-एल आई दिनांक 18-10-2002 के तहत अधिसूचित पूर्व दरें "अंतरिम" थीं जिन्हें अब संशोधित किया गया है।

3. 01-04-1998 से 31-12-2003 की अवधि के दौरान परिपक्वता अथवा मृत्यु के कारण उत्पन्न हुई सभी दावों के लिए ऊपर उल्लिखित दरों पर अंतरिम बोनस ऐसी पॉलिसियों के लिए भी देय होगा जिनका प्रीमियम अदा किया जा चुका है और 01-4-1998 से 31-12-2003 तक की अवधि के दौरान स्वीकार की गई हैं (01-04-1998 को अथवा इसके बाद जारी की गई पॉलिसियों के संदर्भ में बीमा के प्रथम पॉलिसी वर्ष सहित)।

4. बोनस की ऐसी राशि को, जिसमें 50 पैसे अथवा इससे अधिक का अंश अंतर्ग्रस्त है, अगले उच्चतर रुपए में पूर्णांकित कर दिया जाएगा और 50 पैसे से कम के अंश की उपेक्षा कर दी जाएगी।

5. इसे वित्त सलाह (डाक) की डायरी सं. 581 दिनांक 23-4-2003 के जरिए प्राप्त उनकी सहमति से जारी किया जाता है।

[सं. 5-1/2003-एल आई]

वी. पति, उप महाप्रबंधक

New Delhi, the 29th April, 2003

S. O. 1487.— In exercise of powers conferred vide Rule 10 of Post Office Insurance Fund Rules and on the basis of Actuarial Valuation of the assets and Liabilities of Rural Post Office Insurance Fund as on 31-03-1998, the Director General, Posts is pleased to declare a simple Reversionary Bonus on the Rural Postal Life Insurance Policies on their becoming claims, due to death or maturity at the following rates for the year ending 31-03-1998.

Type of Insurance Policy	Rate of Bonus
(i) Whole Life Assurance	Rs. 60 per thousand of sum assured
(ii) Endowment Assurance and Anticipated Endowment Assurance	Rs. 50 per thousand of sum assured

2. The above rate of bonus will also be applicable for the year 1996-97 as the earlier rates notified vide this Directorate's No. 5-2/2001-LI dated 18-10-2002 were "interim" which has been revised now.

3. Interim Bonus at the rates mentioned above will also be payable for all claims arising due to maturity or death during the period from 01-04-1998 to 31-12-2003 for policies for which premiums have been paid and entered upon during the period from 01-04-1998 to 31-12-2003 (including first policy year of assurance in respect of policies issued on or after 01-04-1998).

4. The amount of Bonus involving a fraction of 50 paise or more shall be rounded off to the next higher rupee and fraction below 50 paise shall be ignored.

5. This issues with the concurrence of FA(P) vide Diary No. 581 dated 23-04-2003.

[No. 5-1/2003-LI]

V. PATI, Dy. General Manager

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(खाद्य और सार्वजनिक वितरण विभाग)

नई दिल्ली, 5 अप्रैल, 2003

का. आ. 1488.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय (खाद्य और सार्वजनिक वितरण विभाग) के प्रशासनिक नियंत्रणाधीन भारतीय खाद्य निगम के निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :—

1. भारतीय खाद्य निगम जिला कार्यालय, (गोदी) मुम्बई।
2. भारतीय खाद्य निगम, जिला कार्यालय, (गोदाम), मुम्बई।

[सं. ई-11011/1/2001-हिन्दी]

रजनी राज़दान, संयुक्त सचिव

MINISTY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Food and Public Distribution)

New Delhi, the 5th April, 2003

S.O. 1488.—In pursuance of Sub-rule (4) of rule 10 of the Official Language (use for official purpose of the Union) Rules, 1976 the Central Government hereby notifies the following offices of Food Corporation of India under the administrative control of the Ministry of Consumer Affairs, Food and Public Distribution (Deptt. of Food and Public Distribution), where of more than 80% of staff have acquired the working knowledge of Hindi :

1. Food Corporation of India, Distt. Office (Decks), Mumbai.
2. Food Corporation of India, Distt. Office (Godown) Mumbai.

[No. E-11011/1/2001-Hindi]

RAJNI RAZDAN, Jt. Secy.

वस्त्र मंत्रालय

नई दिल्ली, 9 मई, 2003

का. आ. 1489.—केन्द्रीय सरकार एतद्द्वारा अधिसूचित करती है कि, केन्द्रीय रेशम बोर्ड अधिनियम, 1948 के खण्ड 4 के उप खण्ड (3) के अनुच्छेद (ग) के अनुसरण में, 25 अप्रैल, 2003 में सदन में विधिवत् चुने गए लोक सभा के निम्नलिखित सदस्यों को, उक्त अधिनियम के उपबंधों के अध्यधीन 25 अप्रैल, 2003 से तीन वर्ष की अवधि के लिए केंद्रीय रेशम बोर्ड के सदस्यों के रूप में कार्य करने के लिए नियुक्त किया जाता है :

1. श्री ए. कृष्णास्वामी
2. श्री जी. मल्लिकार्जुनापा
3. श्री के. एच. मुनियप्पा
4. श्री कलावा श्रीनिवासुलु.

[फा. सं. 25012/59/99-रेशम]

किरन धींगरा, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the 9th May, 2003

S. O. 1489.—The Central Government hereby notifies that in pursuance of clause (c) of Sub-section (3) of section 4 of the Central Silk Board Act, 1948, the following members of Lok Sabha, having been duly elected by the House on 25th April, 2003, are appointed to serve as members of the Central Silk Board for a period of three years with effect from 25th April, 2003, subject to the provisions of the said Act:

1. Shri A. Krishnaswamy
2. Shri G. Mallikarjunappa
3. Shri K. H. Muniyappa
4. Shri Kalava Srinivasulu

[F. No. 25012/59/99-Silk]

KIRAN DHINGRA, Jt. Secy.

विदेश मंत्रालय

(सी. पी. वी. प्रभाग)

नई दिल्ली, 30 अप्रैल, 2003

का. आ. 1490.— राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम, 1948 (1948 का 41) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्द्वारा भारत का महाकौसुंलावास सान फ्रौंसिसको में श्री सुरेश कुमार शर्मा, सहायक को 30-04-2003 से सहायक कौंसली अधिकारी का कार्य करने के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2003]

उपेन्द्र सिंह रावत, अवर सचिव (कौन्सुलर)

MINISTRY OF EXTERNAL AFFAIRS

(C. P. V. Division)

New Delhi, the 30th April, 2003

S. O. 1490.—In pursuance of clause (a) of Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Shri Suresh Kumar Sharma, Assistant in the Consulate General of India, San Francisco, California to perform the duties of Assistant Consular Officer with effect from 30-4-2003.

[No. T.-4330/01/2003]

U. S. RAWAT, Under Secy. (Cons.)

विद्युत मंत्रालय

नई दिल्ली, 6 मई, 2003

का. आ. 1491.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में पावरग्रिड कारपोरेशन ऑफ इंडिया लि., नई दिल्ली के नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिसके 80 प्रतिशत कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है:

1. पावरग्रिड कारपोरेशन ऑफ इंडिया लिमिटेड
   पश्चिम क्षेत्रीय भार प्रेषण केन्द्र,
   एफ-3, एम० आई० डी० सी० एरिया,
   मुंबई-400093
2. पावरग्रिड कारपोरेशन ऑफ इंडिया लिमिटेड,
   400 के० वी० इटारसी उप केन्द्र,
   बैतुल रोड, पथरोटा,
   इटारसी-461111 (मध्य प्रदेश)
3. पावरग्रिड कारपोरेशन ऑफ इंडिया लिमिटेड,
   400/220 के० वी० सतना उप केन्द्र,
   लालपुर गांव के पास, पो० सितपुरा,
   पन्ना रोड, 13 किलोमीटर माईल स्टोन,
   सतना-485445
4. पावरग्रिड कारपोरेशन ऑफ इंडिया लिमिटेड,
   400 के० वी० सब स्टेशन, भद्रावती,
   गांव-सुमठाना,
   पो० भद्रावती-442902
   जिला : चंद्रपुर, महाराष्ट्र

[सं. 11017/2/94-हिन्दी]

अजय शंकर, संयुक्त सचिव

MINISTRY OF POWER

New Delhi, the 6th May, 2003

S.O. 1491.— In pursuance of Sub-rule (4) of rule 10 of the Official Language (Use for Official purposes of the Union) Rules, 1976 the Central Government hereby notifies the following offices under the control of Powergrid Corporation of India Ltd. New Delhi, the Staff whereof have acquired 80% working knowledge of Hindi :

1. Powergrid Corporation of India Limited,
   West Region Load Despatch Centre,
   F-3, MIDC Area,
   Mumbai-400093
2. Powergrid Corporation of India Limited,
   400 KV Itarasi Sub Station,
   Betul Road, Pathrota,
   Itarasi - 461111 (M. P.)
3. Powergrid Corporation of India Limited,
   400/220 KV Satna Sub Station,
   Near Lalpur Village, Post Sitpura,
   Panna Road, 13 KM Milestone,
   Satna- 485445 (M.P.)
4. Powergrid Corporation of India Limited,
   400 KV Sub Station, Bhadrawati,
   Village-Sumthana,
   Post-Bhadrawati-442902
   Distt : Chandrapur (Maharashtra)

[No. 11017/2/94-Hindi]

AJAY SHANKAR, Jt. Secy.

श्रम मंत्रालय

नई दिल्ली, 25 अप्रैल, 2003

का. आ. 1492.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद (संदर्भ संख्या 278/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/9/2002-आई. आर. (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 25th April, 2003

S.O. 1492.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 278/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-22012/9/2002-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AT HYDERABAD

Present :

Shri E. ISMAIL

Presiding Officer

Dated : 31st day of March, 2003

INDUSTRIAL DISPUTE CASE NO. 278/2002

BETWEEN:

Sri G. Solomon,
General Secretary,
Singareni Collieries Mines Workers Union,
Qtr. No. D/703, Opp. Rythu Bazar,
Godavarikhani-505209. ... Petitioner

AND

The General Manager,
M/s. Singareni Collieries Co. Ltd.,
Ramagundam-II,
Godavarikhani. ...Respondent

APPEARANCES:

For the Petitioner : Nil

For the Respondent : M/s. K. Srinivasa Murthy, V. Umadevi & C. Vijaya Shekar Reddy, Advocates

AWARD

The Government of India, in the Ministry of Labour by its Order No. L-22012/9/2002-IR(CM. II) dated 8-8-2002 referred the followig dispute under Section 10(1) (d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s Singareni Collieries Co. Ltd. and their workman. The reference is,

SCHEDULE

"Whether the action of the Management of M/s. Singareni Collieries Co. Ltd., Ramagundam-I Division, Godavarikhani in dismissing Sri Janjerla Lachulu, Coal Filler, GDK-7 (LE) P from service w.e.f. 15-1-98 is justified ? If not, to what relief is the workman entitled ?"

The reference is numbered in this Tribunal as I.D. No. 278/2002 and notices issued to the parties.

2. Inspite of several adjournments given from 18-10-2002 filing of claim statement and documents for 8 adjournments including 31-3-2003 petitioner has not turned-out with claim statement and documents. Inspite of number of adjournments the petitioner has failed to produce any evidence in support of his claim. Petitioner's Counsel reports no instructions. There is nothing on record to support the case of the Petitioner. Therefore, the reference is ordered against the petitioner and it is held that the petitioner is not entitled for any relief.

Accordingly a 'Nil' Award is passed, Transmit.

Dictated to Kum.K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 31st day of March, 2003.

E. ISMAIL, Presiding Officer

Appendix of evidence

Wintnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 25 अप्रैल, 2003

का. आ. 1493.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय हैवी वाटर प्रोजेक्ट प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद (संदर्भ संख्या 218/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2003 को प्राप्त हुआ था।

[सं. एल-22013/1/2003-आई. आर. (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 25th April, 2003

S.O. 1493.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 218/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Heavy Water Project and their workman, which was received by the Central Government on 24-04-2003.

[No. L-22013/1/2003-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AT HYDERABAD

Present :

Shri E. ISMAIL

Presiding Officer

Dated : 26th day of March, 2003

INDUSTRIAL DISPUTE NO. I.C.I.D. 218/2001

(Old I.D. No. 1/99 transferred from Industrial Tribunal-cum-Labour Court, Warangal)

BETWEEN:

Sri B. Veerabhadram,
S/o B. Lingaiah,
R/o Chavitagudam,
Aswapuram (M), Khammam Dist. ... Petitioner

AND

The General Manager,
Heavy Water Project,
Manugur, Khammam District. ...Respondent

APPEARANCES:

For the Petitioner : M/s. G. Ravi Mohan, R. Devender Reddy, Ch. Satyanarayana & G. Srinivas Reddy, Advocates

For the Respondent : Sri B. Rajavardhan Reddy, Advocate

AWARD

This case I.D. No. 1/99 is transferred from Industrial Tribunal cum Labour Court, Warangal in view of the Govement of India, Ministry of Labour's Order No. H-11026/1/2001-IR(C- II) dated 18-10-2001 and renumbered in this Court as I.C.I.D. No. 218/2001. This is case taken under Sec. 2 A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others

1332GI/03-2

2. Inspite of several adjournments given from 11-2-2002 for enquiry of the Petitioner for 25 adjournments including 26-3-2003 the petitioner called absent. Petitioner's Counsel reports no instructions. There is nothing on record to support the contention of the Petitioner. Therefore, it is held that the petitioner is not entitled for any relief.

Accordingly a 'Nil' Award is passed, Transmit.

Dictated to Kum.K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 26th day of March, 2003.

E. ISMAIL, Presiding Officer

Appendix of evidence

Wintnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 25 अप्रैल, 2003

का. आ. 1494.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण हैदराबाद (संदर्भ संख्या 18/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2003 को प्राप्त हुआ था।

[सं. एल-22012/137/2002-आई. आर. (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 25th April, 2003

S.O. 1494.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2003) of the Central Government Industrial Tribunal-Cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 24-4-2003

[No. L-22012/137/2002-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AT HYDERABAD

Present :

Shri E. ISMAIL

Presiding Officer

Dated : 31st day of March, 2003

INDUSTRIAL DISPUTE NO. 18/2003

BETWEEN:

Sri Raiz Ahmed,
General Secretary,
Singareni Miners & Engg. Workers Union (HMS),
Godavarikhani-505209. ... Petitioner

AND

The General Manager,
M/s Singareni Collieries Co. Ltd.,
Ramagundam-I,
Godavarikhani-505209 ...Respondent

APPEARANCES:

For the Petitioner : Nil

For the Respondent : M/s. K. Srinivasa Murthy, Advocate

AWARD

The Government of India, the Ministry of Labour by its Order No. L-22012/137/2002-IR(CM. II) dated 23-12-2002 referred the following dispute under section 10(1) (d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s Singareni Collieries Co. Ltd. and their workman. The reference is,

SCHEDULE

"Whether the demand of the Singareni Mines & Engg. Workers union from the management of M/s. Singareni Collieries Co. Ltd., Ramagundam Divin-I, Godavarikhani to rectify the anomalies in fixation of basic pay in respect of S/Sri (1) V. Laxminarayana, (2) A. Chandramouli, (3) K. Momaraiah, (4) P. Bhoomachary, (5) M. Chandra Prakash, (6) Faqeer Mohmed, (7) K. Harmaiah, (8) A. Sudhershan, Turner compared with their junior Sh. N. Dakshna Moorthy, Turner and further that of S/Sh. (1) U. Surya Rao, (2) A. Rajalingaiah, (3) Gulam Mohammed, (4) V. Shankaraiah, (5) Gulam Musthafakhan, (6) A N V Prasad, (7) K. Kanakapal, (8) R. Jajamouli, (9) R. Laxminarasaiah, (10) B. Laxminarasaiah compared with their junior Sri Doli Rajaiah, Welder is justified ? If so, to what relief are the workmen entitled and from what date ?"

The reference is numbered in this Tribunal as I.D. No. 18/2003 and notices issued to the parties.

2. Inspite of several adjournments given from 13-3-2003 for filing of claim statement and documents for 4 adjournments including 31-3-2003 peritioner has not turned-out with claim statement and documents. Inspite of number of adjournments the petitioner has failed to produce any evidence in support of his claim. There is nothing on record to support the case of the Petitioner. Therefore, the reference is ordered against the petitioner and it is held that the petitioner is not entitled for any relief.

Accordingly a 'Nil' Award is passed, Transmit.

Dictated to Kum.K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 31st day of March, 2003.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 25 अप्रैल, 2003

का. आ. 1495.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 262/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/261/2001-आई. आर. (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 25th April, 2003

S.O. 1495.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 262/2002) of the Central Government Industrial Tribunal-Cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-22012/261/2001-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AT HYDERABAD

Present :

Shri E. ISMAIL

Presiding Officer

Dated : 28th day of March, 2003

INDUSTRIAL DISPUTE CASE NO. 262/2002

BETWEEN:

Sri Ch. Rama Raju,
General Secretary,
Singareni Coal Belt Emp. Union
H. No. T-1329, Ramalayam Compound
Godavarikhani-505209. ... Petitioner

AND

The General Manager,
M/s Singareni Collieries Co. Ltd.,
Ramagundam-I,
Godavarikhani-505209 ...Respondent

APPEARANCES:

For the Petitioner : Nil

For the Respondent : Nil

AWARD

The Government of India, Ministry of Labour by its Order No. L-22012/261/2001-IR(CM.II) dated 10.7.2002 referred the following dispute under section 10(1) (d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Co. Ltd., and their workmen. The referrence is,

SCHEDULE

"Whether the action of the General Manager, M/s. Singareni Collieries Co. Ltd., Ramagundum-Divn-I, Godavarikhani in affecting recovery of the cost of 5 bedsheets, reported missing during stock verification, from 23 workmen of area hospital/Ramagundam-I Divn. is justified? If not, to what relief are the workmen concerned entitled?"

The reference is numbered in this Tribunal as I.D.No. 262/2002 and notices issued to the parties.

2. Inspite of several adjournments given from 1-10-2002 for filing of claim statement and documents for 8 adjournments including 28-3-2003 the petitioner has not turned-out with claim statement and documents. Inspite of number of adjournments the petitioner has failed to produce any evidence in support of his claim. There is nothing on record to support the case of the Petitioner. Therefore, the reference is ordered against the petitioner and it is held that the petitioner is entitled for any relief.

Accordingly a 'Nil' Award is passed. Transmit.

Dicated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 28th day of March, 2003.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1496.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण गोदावरीखानी (संदर्भ संख्या 78/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-04-2003 को प्राप्त हुआ था।

[सं. एल-22013/1/2003-आई. आर. (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 28th April, 2003

S.O. 1496.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 78/2002) of the Industrial Tribunal-cum-Labour Court, Godavarikhani as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 25-04-2003.

[No. L-22013/1/2003-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GODAVARIKHANI

PRESENT:

Shri P. GURNADHA RAO, B.Sc., B.L., Chairman-Cum-Presisding Officer.

Monday, the 7th Day of april 2003

INDUSTRIAL DISPUTE NO. 78 of 2002

BETWEEN:—

Mohd. Fareed, S/o. Mohd. Afzal,
Age 30 yrs., Occ: Ex-Badli Filler,
K.K. No. 1 Incline, S.C. Co. Ltd.,
Mandamarri Division,
R/o. H. No. 15-1-63/1, Tilak Nagar,
Godavarikhani-505 209. —Petitioner

AND

The General Manager,
The S.C.Co. Ltd.,
Mandamarri Division,
Kalyankani (Post),
Adilabad District (A.P.) —Respondent

This petition coming before me for final hearing in the presence of Sri G. Narayana, Advocate for the petitioner and of Sri D. Krishna Murthy, Advocate for the repondent and having stood over for consideration till this date, the court passed the following :—

AWARD

1. This is a petition filed U/s 2-A(2) of the Industrial Disputes Act, 1947, as amended by A.P., Amendment Act, 1987.

Facts of the case briefly are as follows :—

The petitioner secured employment in the respondent company under the dependent scheme when the petitioner's father was declared medically unfit. The petitioner was appointed as Badli Worker on 14-6-92. On 12-8-93, a chargesheet was issued against the petitioner alleging that he submitted fraudulent medical unfit certificate of his father. Domestic enquiry was conducted. The presenting officer was examined and certain documents were marked through him. The petitioner was dismissed from the service w.e.f. 2-7-99.

2. Respondent filed counter.

3. Ex. M-1 to Ex. M-9 are marked.

4. Heard both sides.

5. The point for consideration is whether the charge against the petitioner is proved, if so, whether the punishment of dismissal for the petitioner from the service is in proportion to the charge ?

6. POINT :—Ex. M-1 charge-sheet dt. 12-8-93. It is stated that the petitioner secured employment in the company as dependent in a fraudulent manner in connivance with Sri Mohd. Afzal by producing a fake certificate of Medical unfitness.

Ex. M-2 is reply to the charge-sheet given by the petitioner. It is stated that his father Mohd. Afzal was retired from service under medical unfit.

Ex. M-3 is enquiry proceedings.

Sri B.I. Vijay Kumar, presenting officer was examined. He states that he was working as Personnel Officer in Mandamarri Area and he was appointed as presenting Officer by the General Manager, Mandamarri. He gives the details of the case. In support of his statement, he filed 12 documents.

7. The petitioner was also examined as a witness. He states that he did not produce any bogus certificate for his employment in the company.

8. The charge against the petitioner is that he produced fake medical unfit certificate and secured employment, but no one was examined to prove that the medical unfit certificate was fake one. Only the presenting officer was examined. He was appointed by the respondent company to conduct the case on behalf of the respondent company, but not to give evidence. His statement is not evidence. At the most, it is the case of respondent company. It must be proved by independent evidence.

9. The father of the petitioner was retired from service on the basis of medical unfit certificate. The petitioner was given employment as dependent in the year, 1992.

Whether the medical unfit certificate was genuine or fake one, the father of the petitioner was retired from the service. Therefore, the medical unfit certificate was given effect to by the respondent company. The petitioner had nothing to do with that medical unfit certificate of his father. He came into the picture only after his father was retired from the service. He did dervice from 1992 to 1999. The respondent company allowed the petitioner to work for seven years eventhough charge-sheet was issued in the year 1993. If at all action had to be taken, it must be taken against the father of the petitioner for producing fake medical unfit certificate, but not against the petitioner. The petitioner was dismissed from the service for no fault on his part. He did not submit the medical unfit certificate.

The charge against the petitioner is not proved. Therefore, the punishment of dismissal of the petitioner from the service is illegal.

Hence, I answer the point accordingly.

In the result, this petitiony is allowed. The order of dismissal of the petitioner from the service is set-aside. The petitioner shall be reinstated into service without back-wages, but with continuity of service and all attendant benefits including release of notional increments from the date of dismissal till the date of reinstatement. The petitioner is not entitled to wages from the date of dismissal till the date of filing this petition.

The parties do bear their own costs.

Typed to my dictation, corrected and pronounced by me in the open court on this, the 7th day of April, 2003.

P. GURUNADHA RAO, Chairman -Cum-Presiding Officer,

Appendix of Evidence

Witnessess-examined

For workman :— **For Management :—**

—Nil— —Nil—

Exhibits

For workman :—

—Nil—

For Management :—

Ex. M-1	dt. 12-8-93	Charge-sheet.
Ex. M-2	dt. 16-8-93	Explanation to charge-sheet.
Ex. M-3	dt. 20-4-97	Enquiry proceeding alongwith enquiry material documents.
Ex. M-4	dr. 29-5-97	Enquiry report.
Ex. M-5	dt. 23-6-97	2nd show-cause notice.
Ex. M-6	dt. 30-6-97	Ack., to 2nd show-cause notice with enquiry notice.
Ex. M-7	dt. 5-7-97	Application of petitioner.
Ex. M-8	dt. 2-7-99	Dismissal latter.
Ex. M-9	dt. 19-7-99	Acknowledgement of petitioner.

नई दिल्ली, 29 अप्रैल, 2003

का.आ. 1497.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय रिजर्व बैंक नोट मुद्रण लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, बंगलौर के पंचाट (संदर्भ संख्या सी. आर. नं. 55/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-04-2003 को प्राप्त हुआ था।

[सं. एल-12011/27/2001-आई. आर. (बी-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 29th April, 2003

S.O. 1497.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (C.R. No. 55/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharatiya Reserve Bank Note Mundran Ltd. and their workman, which was received by the Central Government on 28-04-2003.

[No. L-12011/27/2001-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BANGALORE

Dated : 3rd April, 2003

PRESENT :

HON'BLE SHRI V. N. KULKARNI, B. COM, LL.B.

PRESIDING OFFICER

CGIT-CUM-LABOUR COURT,

BANGLAORE

C.R. NO. 55/2001

I PARTY	II PARTY
The General Secretary Bharatiya Reserve Bank Note Mudran Employers Union, No. 7, Kalyana Bhawan Building, Thyagaraja Road, Mysore-570 004	The Managing Director, Bharatiya Reserve Bank Note Mudran Ltd., Mysore-570 003

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (2A) of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12011/27/2001-IRC(B-I) dated 16th August 2001 for adjudication on the following schedule :

SCHEDULE

"Whether the claim of the Bharatiya Reserve Bank Note Mudran Employees Union for the payment of regular scale of wages to the workmen in respect of their training period is justified? If so, what relief the workmen are entitled."?

2. Workmen of BRBNM Ltd., represented by Employees Union placed Charter of Demands for the payment of regular scale of wages to the workmen in respect of their training period and the management is not considered the same. Therefore Industrial Dispute is raised.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. The case of the Union in brief is as follow :—

5. Second Party is a Public Limited Company established under the Companies Act, 1956 initially as a private limited company incorpoarated on 3-2-1995. The Second Party has establsihed two factories, the printing presses, one at Mysore and another in West Bengal. Both the factories are registered under the Factories Act, 1948. The Reserve Bank of India is at present the sole purchaser of the goods/notes manufactured in these factories. Both the factories are owned, controlled and managed by the said public limited company.

6. It is the further case of the union that the Second Party by an advertisement in the year October/ November 1966 sought for applications from the prospective candidates for recruitment of Industrial Workmen Staff Grade-I and III, wherein it was initimated that candidates selected for the posts of Production Assistants (Grade-I & III) and the Process Assistant (Grades I & III) are required to undergo training for a period of three months on stipend and accordingly in pursuance to the said advertisement number of candidates were selected by the Second party for these posts whose names, employment number date of joining, respective grades etc. are noted in the Charter of Demands.

7. It is the further case of the Union that the candidates who have been so selected in pursuance to the advertisement were given with apppointment orders by the Second Party prescribing two years' training period in utter violation of the offer made in the said advertisement, taking undue advantage of the gravest unemployment problem haunting the youth of our country. These selected and appointed youth had no choice but to accept the said unfair condition of two years training as otherwise they have to starve and suffer.

8. It is the further case of the Union that these employees though called as trainees, are made to work as

any other regular employees but for the purpose of payment is concerned they are called as trainees but they have been deprived of regular scale of pay and other attendant benefits.

9. It is the further case of the Union that no training is being imparted to the workmen by the second party. Union for these reasons and for some other reasons has prayed to pass award in its favour.

10. Against this case of the management in brief is as follows :

11. Management has filed a lengthy counter and has said that the union is not justified in their demand for regular scale of wages to the workmen in respect of their training period. Reference itself is not maintainable because none of the trainees have become the members of the first party union, and the first party has no *locus standi* to represent or espouse their cause. There is no question of equal pay for equal work. The Second Party had advertised for recruitment to various positions in the month of October/November 1996 envisaging limited training period.

12. It is the further case of the second party that before recruiting the manpower based on this advertisement, it carried out a detailed review of the training needs based on the experience and feedback of the 1st phase operation with employees recruited in the first lot in 1995. Accordingly, the management decided to impart training of adequate duration to all the raw hands to be recruited in a structured curriculum in order to mould them to meet the requirements of the Industry and equip them to run the most sophisticated and advanced machinery of currency printing technology. The trainees, on whose behalf the Union has raised this dispute had all agreed to the terms and conditions of the offers of appointment in totality and accordingly were allowed to join the company. It is therefore, submitted that there is no cause of action for raising this dispute, in violation of the agreed terms and conditions. Unlike other organizations, where trainees are paid a pittance as stipend, this organization has been paying almost 80%-90% of the wages that would have been payable to the regular grades of employees, besides various other facilities and benefits in excess of the terms of appointment as trainees. The second party has paid stipend more than the minimum pay in the regular scales as advertised i.e. Rs. 2600/- and Rs. 3700 for Grade I and Grade II respectively.

13. It is the further case of the management that all the trainees have been given two years training which comprise of on the job training as well as off the job training. Management for these reasons and for some other reasons has prayed to reject the reference.

14. It is seen from the records that the management examined one witness MW1.

15. MW1, Mr. Mishra, S.K who has given evidence that the management gave an Advertisement, which an open advertisement to all citizens of India for the post advertised which was an invitation and not an offer. Regular scale of wages to the workmen in respect of the training period is absolute unjustified, as they are not at par with the employees. The definition of Trainee is as in the certified Standing Order of the company as well as the relevant apprenticeship act. The principles of equal pay for equal work does not arise. They were not doing any regular work but they were learning in the process of the on the job training.

16. On behalf of the Union two witnesses were examined. WW1, Shri Anand M. has given detailed evidence who is the General Secretary of the first party Union. In support of the Claim Statement he has given evidence. WW2, Ravi Shankar, H.S. Industrial Workman Grade I gave evidence. He says that they agreed with the terms because they would not have been appointed. He categorically says that no training was given during regular work.

17. After the close of the evidence both parties have filed written arguments. I have heard the arguments of the learned counsels for the parties. Written Arguments of the Management is nothing but repetition of the Counter Statement filed by the management.

18. It is an admitted fact that the management gave an open advertisement to all the citizens of India for the post. Advertisement is filed by both sides. To appreciate the rival contentions, evidence of both sides has to be strictly scrutinized. We have to be seen carefully the documents. The main contention of the management is that the trainees have not authorized the union to raise this dispute and this dispute is not maintainable. Against this it is said by the union that first party union is the only union of the Second Party. The trainees who are confirmed have become the members of the Union.

19. WW I and WW II have categorically stated in their statement that they have not given written representation to the union but they have orally informed the union about the present dispute and the union has right to raise the dispute.

20,. Learned counsel appearing for the workman has relied Decision reported in 2001-II-LLJ 1241 *Mukand Ltd. Vs. Mukand Staff and Officers Association.* In view of the principles held in the above decision and the evidence of WWI that they have informed the Union orally is sufficient to hold that the union has a community interest and the present dispute is maintainable.

21. It is also argued by the learned counsel appearing for the workmen that if these workmen had given in writing to raise this dispute, they would not have been

regularized by the management. There is merit in this contention

22. In this regard the evidence of MW I is important. In Examination in Chief itself he says it is a fact that on the advertisement they have advertised that they will be on training for 3 months with the knowledge of their operation from December 1995 and at that time the decision was taken by the management that 3 months training will be sufficient. This itself is sufficient to say that appointment order fixing 2 years time for training by the management is in violation of original advertisement and the intention of the management behind this was to take regular work from these workmen as trainees and pay 80—90% wages. Of course these workmen individually have given clarification that they did not represent in writing to the union to raise dispute but they have categorically said that they have informed the union orally.

23. It was argued by the learned counsel appearing for the Workmen that in the given circumstances out of fear they have given clarification, and they have accepted the latter decision of the management making 2 years period as trainees because they were afraid that they would get job. There is merit in this contention.

24. MW1 also says in his evidence before us that it is a fact that some trainees have given independent operation to run the machine with the intention that when they will be placed on machine as a regular workmen and they will feel confident to run the sophisticated machine and they will not put any problem to the machine because of their own hand training. With this evidence of MW1it is clear that these workmen have worked as regular workmen and they were independently working after they were appointed. Management for the reasons best known to them has not examined any officer/official saying that training was imparted to these workmen. On the other hand workmen have said that no training was given.

25. Learned counsel appearing for the workmen has also relied the following decisions :

(1) 1950 LLJ 921@ 948

(2) 1982 SCC (L&S) 42

(3) 1995 5 SCC 75

(4) 1998 LLR 392

(5) 1999 II LLJ 856

(6) 1999 II LLJ 1136

(7) 2001 II LLJ.

26. I have read them carefully. Against this the learned counsel appearing for the management has relied the following decisions:

(1) 1996 II LLJ 91(SC)

(2) 1998 I LLJ 1233 (SC)

(3) 2003 LLR 44 (SC)

(4) 2000 LLR 1137 (SC).

27. I have read them carefully. In the decision of the *State of UP & Ors.* the question of equal pay for equal work to the Investigation-cum-Computer appointed on temporary basis was considered. Here facts are quite different from the facts of the above decision.

28. I have already said that according to the evidence of MW1 some of these workmen were doing independent work and there is no reason to disbelieve the evidence of MW1 and MW2 and to the effect that these workmen were doing regular work. Again the decision of *Union of India and others & Ram Gopal Agarwal & Others* Nature, sphere, duration of work and other special circumstances attaching to their performance of duties were under consideration. Here the union has proved these workmen were doing regular work. The facts of the case on hand are quite different from the facts of the decisions relied by the management.

29. I have read the decisions relied by the management but I am of the opinion that the Management has to first establish that these workmen were imparted training by examing the official/officer who have imparted the training but the management has failed to adduce their evidence.

30. In the instant case it is clear that these workmen were paid 80 to 90% wages during the period of 2 years. In view of this these workmen are not entitled for pay arrears of wages up to the date of reference i.e. 16-8-2001. From the proved facts it is clear that the management was justified only to treat these workmen as trainees for 3 months and thereafter for the remaining period they have discharged the work of the regular employees and accordingly the demand is justified. In the result I proceed to pass the following Order:

ORDER

The reference is allowed holding that the first party is justified in demanding the payment of regular wages of scales which has been deemed as training period by the second party and direction is given to the management to declare all these workmen as regular employees from the date of expiry of 3 months training period. No arrears are awarded. Accordingly reference is disposed of.

(Dictated to PA transcribed by her corrected and signed by me 3rd April, 2003).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 29 अप्रैल, 2003

का.आ. 1498.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय रिजर्व बैंक नोट मुद्रण लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, बंगलौर के पंचाट (संदर्भ संख्या सी०आर० नं० 87/1999)को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-12011/13/99-आई. आर.(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 29th April, 2003

S.O. 1498.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (C. R. No. 87/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharatiya Reserve Bank Note Mudran Ltd. and their workman, which was received by the Central Government on 28-04-2003.

[No. L-12011/13/99-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated the 4th April, 2003

PRESENT:

HON'BLE SHRI V. N. KULKARNI, B. Com. L.L.B,

PRESIDING OFFICER

C.R. No. 87/1999

I PARTY : The General Secretary, Bharatiya Reserve Bank, Note Mudran Employees Union, No. 7, Kalyan Bhavan Building, Thyagaraja Road, Mysore-570004

II PARTY : The Deputy General Manager, Bharatiya Reserve Bank, Note Mudran Limited, Metagalli Industrial Area, Mysore-570016

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12011/13/99-IR (B-1) dated 23rd July, 1999 for adjudication on the following schedule :—

SCHEDULE

"Whether the Bharatiya Reserve Bank Note Mudran Employees Union is justified in raising the following demands within one year from the date of extending benefits 10% more than the Vth Pay Commission recommendations?"

2. Workmen of the Bharatiya Reserve Bank Note Mudran Limited, Mysore represented by Bharatiya Reserve Bank Note Mudran Limited Employees Union placed demands dated 16.1.1999 on the Second Party and the Competent Authority referred these demands for adjudication to this Tribunal by an order dated 23rd July 1999.

3. Parties appeared and filed detailed Claim Statement and Counter respectively.

4. The case of the first party Union in brief is as follows :—

5. The Second Party is a public Limited Company established under the Companies Act, 1956 initially as a private limited company incorporated on 3.2.1995. The Second Party has established two factories, the printing presses, one at Mysore in Karnataka and another at Salboni in West Bengal and both the factories are registered under the Factories Act, 1948. The Reserve Bank of India is at present the sole purchaser of the goods/notes manufactured in these factories. Both these factories are owned, controlled and managed by the said Public Limited Company. The goods manufactured in these factories are sold to the Reserve Bank of India and these factories in a way have got monopoly and there is no private contender for manufacture of these goods.

6. The Union in Para 2 of the Claim Statement has given detailed figures showing Income and Expenditure of the Management as under:

FIGURES IN RUPEES (CRORES)

	1996-97	1997-98	1998-99	1999-2000
Income	37.73	114.29	19.42	487.65
Expenditure	25.05	84.67	85.28	209.44
Profit before depreciation. Interest and taxes	12.68	29.62	111.14	278.21
Less Depreciation	7.62	14.43	22.02	140.37
Interest	0.04	8.58	20.42	92.21
Profit for the year	5.02	61.6	68.70	45.63
Less:Prior Period adjustments	0.0	1.98	-0.64	1.27
Profit before tax	5.02	4.63	69.34	44.36
Less: Provision for taxation	0.68	0.74	7.72	5.11
Net Profit Tax	4.34	3.89	62.62	39.25

7. The workmen are working in the factory at Mysore of the Second Party Management. List of the workmen is also given. The Union placed Charter of Demands. Demands are as under : —

(1) Recognition of Union
(2) Wage scales
(3) Lower Grade Employees
(4) Amendment to Standing Orders
(5) Payment of wages for strike period
(6) Leave Travel Facility
(7) Leave and Holidays
(8) Annual Bonus
(9) Medical facilities
(10) Seniority and Promotion
(11) Education facilities for Children
(12) Incentive for Family Planning Programme
(13) Separate Rest Room for Workmen (Ladies and Gents)
(14) Education facilities for Employees
(15) Conveyance
(16) News Paper Allowance
(17) Productivity Payment
(18) Shift Allowance
(19) Over Time
(20) Working days
(21) Late Entry
(22) Attendance Bonus
(23) Check off System
(24) Canteen
(25) Loan Facilities
(26) Compensation to Accident or Death
(27) Electricity
(28) GSLI Premium and Fidelity Guarantee
(29) Festival Advance

8. It is the further case of the Union that the management was provided free transportation to the employees who are not residing in township and free bus service to the Township residents. Half a day Casual Leave is claimed. Restricted Holidays is claimed. Pension Scheme has to be introduced to all workmen. In each demand particulars are given in the Claim Statement.

9. It is the further case of the Union that in tune with the modern factory Management, entirely new culture has been introduced in the Mysore Factory by the management and the personnel are trained to handle the multiple jobs and zero spoilage has been achieved in the Mysore Factory.

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10. It is a incorrect stand of the Second Party in the Conciliation Proceedings, that the Second Party has increased the pay scale of the workmen by 10% than what has been recommended by the Vth Central Pay Commission is given as under :—

PAY SCALES

Grade	Prior to 1.1.1996	Recommended by Vth Pay Commission w.e.f. 1.1.1996	10%of column'3'	Actually given
Grade-I	850-1200	3050-75-3980-80-4590	3355-5049	3025-4850
Grade-II (Off.Asst)	950-1500	3050-75-3980-80-4590	3355-5049	3350-5030
Grade-III	1200-2040	5500-175-9000	6050-9900	4400-6600
Grade-IV	1400-2600	6500-200-10500	7150-11550	5500-8800

11. The wasteful and avoidable expenses incurred by the Second Party are amounted in crores and whereas the second party could have thought of paying need based wages/salaries to the employees who are generating wealth. In Para 10 of the Claim Statement at page 17 wage scales claimed as under :

COLUMN NO.7

Grade	40% of the V CPC Pay scales	At least the following pay scales may please be given
Grade-I	4270-6426	4000-100-6000
Grade-II	4270-6426	4000-100-6000
Grade-III	7700-12600	7500-250-12000
Grade-IV	9100-14700	9000-300-14400

12. Details of comparison regarding the service conditions, the average daily production, quality analysis of the produce, man power deployed, productivity and the hourly rate of production etc. are given in para 11 of the Claim Statement. Chart wise service conditions, average daily production in the presses etc. are shown in the chart as under :—

(a) Service Conditions

S.No		BNP Dewas	CNP Nasik	Msyore
1.	Working days	271	269	304
2.	Weekly working hours	44	44	48
3.	Average Level			
	(a) Casual leave	12	12	7
	(b) Sick Leave ½ pay Industrial Staff	20	20	Nil
4.	Public Holidays	16	18	9
5.	Recruitment Standards			
	(a) Industrial Staff Gr. I VIII		VII Std	SSC with ITI with 50% marks

S.No		BNP Dewas	CNP Nasik	Maysore
	(b) -do- Grade-IV	Diploma/ Degree	Diploma/ Degree	Graduate/ Diploma/ Degree with 60% Marks
6.	Medical Expeness	Fully Borne by the Govt.	Fully Borne by the Govt.	Reimbursement Medical expenses with restrictions
7.	Central Government Health Scheme	Available for retired employees	Available for retired employees	Not available
8.	Pension on par with Govt. Rules	Available	Avialable	Not Available

(b) Average Daily Production in the presses.

S. No	Machines	BNP, Dewas	CNP, Nasik	Maysore
1.	Production day on printing machines	65 reams 11hrs. with incentive	75 reams 11 hrs. with incentive	115 reams in 08 hours
2.	Production day on finishing machines	1.5 million note pieces in 11 hrs. with incentive	1.5 million note pieces in 11 hrs. with incentive	02 million note pieces 08 hrs.

(c) Quality Analysis

S. No	Area of Operation	BNP, Dewas	CNP, Nasik	Maysore
1.	Printed Sheets	75% on average	85% on average	98% on average
2.	Note spoils during single note examination	Around 3%	Around 5%	

(d) Deployment of Man Power on Machines

Machines	BNP, Dewas			CNP, Nasik			Mysore		
Machine operation speed	5200 Sheets/ hour			6400 Sheets/ hour			10000 sheets/ hour		
	Tec.	Cont	Total	Tec.	Cont.	Total	Prod	Proc	Total
Dry Offset	5	4	9	7	9	16	4	1	5
Ingalio	5	4	9	7	10	17	5	1	6
Numbering	4	5	9	4	10	14	4	1	5
Finishing	4	6	10	12	11	23	-	7	7
Note sorting	-	5	5	-	7	7	-	2	2
Single Note Numbering	-	5	5	-	5	5	-	2	2
Guillotine	4	4	8	4	4	8	-	2	2

(e) Employment of manpower in General

S.No.	Work Area.	BNP, Dewas	CNP, Nasik	Maysore
1.	Industrial Workman Staff			
	(a) Stores	59	129	08
	(b) Technical/production	325	604	54
	(c) Maintenance/Workshop	569	473	36
	(d) Control/Process			
	(i) Offset Printing	79	221	02
	(ii) Intaglio Printing	121	49	02
	(iii) Quality Control	136	193	08
	(iv) Numbering	57	187	02
	(v) Quality inspection	87	214	05
	(vi) Salvage	217	992	16
	(vii) Finishing	246	959	16
	(viii) Packing	24	120	05

13. In Para 13 it is said that some of the demands are either settled or not pressed.

14. Regarding Wage Scales it is said Wage Scales of all employees has to be revised over and above the 5th Central Pay Commission Recommendations by at least 40%. There shall be proper categorization of all employees with the principle of equal pay for equal work. The categorization shall be done in consultation with the workmen and all anomalies shall be removed within a time frame to be agreed between the management and the workmen. Workmen shall be entitled to Dearness Allowance on par with Central Government.

15. Regarding production at Nasik and Dewas details are given. Regarding Lower Grade Employees it is said that they are performing work equal to higher grade employees and therefore, they are entitled for equal wages. It is further said that the previous scale of Rs.850/-should have been revised to Rs. 3050/-+10%, which comes to Rs. 3355/-, but this has been revised to Rs.3025/- only. Hence, the scale should be revised to Rs. 3355/- with retrospective effect. The Second party extracted the work of higher grade employees from the lower grade employees and therefore the demand for equal pay for equal work is just and reasonable.

16. Grade-I employees scale is also given in detail. Wages for the strike period are to be given. Union for these reasons and for some other reasons has prayed to pass award in its favour.

17. Management filed detailed Counter. The case of the management in brief is as follows:—

18. It is true that the second party is a Public Limited Company established under the Companies Act, 1956 which has become a deemed Public Limited Company as per the provisions of the Act. It is not correct to infer that the 2 presses have been established with the sole motive of earning profits. It is also not correct to conclude that

there are other private contenders for manufacturing currencies. Manufacturing currency is a sovereign function and cannot be equated with the manufacture of any other commercial commodities. The Income and Expenditure accounts displayed in the Claim Statement by the first party is correct. But it does not reveal a prime factor that, the second party has been financed by the Reserve Bank of India and the debt has to be periodically serviced and repaid with interest. Hence the surplus fund of the management cannot be distributed amongst the employees, without taking steps for repayment of loans. The majority of the workmen are members of the first party Union. The first party workmen had raised Industrial Dispute before the Asst. Labour Commissioner(Central), Bangalore, wherein the matters were threadbare discussed and it was brought to the notice of the Conciliation Authority, that the workmen of the first party union are paid highest wages and providing higher benefits to their workmen in the region. It is pertinent to submit that, the second party in revising the pay scales of its employees, has allowed 10% more than the benefits contemplated under Vth Pay Commission recommendatins, and that too with retrospective effect though the Company had no such obligation of implementing V Pay Commission Recommendation as stated in Para 4 of the Counter.

19. The production and other details given by the workmen are no where near the reality and are highly inflated.

20. It is the further case of the management that the Second Party concentrated on multi-functional skill development by providing not only in-house training to the workmen at the Training Center and in shop floor, but by providing training outside/abroad in some cases. In para 7 of the Counter work procedures, process, allocation etc. is given in detail.

21. It is the further case of the management that the workmen of the establishment are paid better wages and benefits compared to other establishments both region-wise and Industry-wise and there is heavy financial burden to be discharged by repayment of the loans taken from the Reserve Bank of India.

22. In the Counter regarding Recognition of Union it is said that the issue is favourably considered by the management after ascertaining its representative capacity and the first party union has been recognized as the sole representative of the workmen of the establishment, barring trainees.

23. Regarding Wage Scales it is said that the wage scales of the workmen have been revised during latter half of 1998 by liberally considering the scales 10% over and above the recommendations of Vth Pay Commission. There is no justification for any further revision at this stage. Details are given in para 9(B). Regarding Manpower details are given in the counter. The workmen are indeed paid Dearness Allowance at par with Central Government Employees. Therefore, the demand is not correct. Regarding Lower Grade Employees details are given and it is said that the demand is unjust. Regarding Amendment to Standing Orders it is said that the Standing Orders have been certified after due process of law and are fair and reasonable. Regarding Wages for Strike Period it is said that workmen were on illegal and unjustified strike and therefore , the said demand is not correct. Regarding Leave Travel Facility it is said that the management is having a liberal LT facility which provides for 2 LTFs in a block of 4 years to visit home town and at the option of employee, conversion of one of 2 LTFs to visit anywhere in India and therefore, that demand is not correct.

24. Regarding Leave & Holidays it is said that the management has considered all the demands reasonable and there is no merit in this demand.

25. It is the further case of the management that the workmen are not entitled for Annual Bonus and the second party falls within the provisions of Section 20 of the Payment of Bonus Act. Regarding Medical Facilities it is said the workmen who are covered under ESI Act are not entitled for reimbursement and the workmen who are not covered under ESI Act are entitled for reimbursement. Therefore the demand is not correct.

26. Regarding Education Facility it is said that all benefits are given and the demand for Incentive for Family Planning Programme is not correct. Demand of Separate Rest Room for the Workmen (Ladies & Gents) is also not correct. Educational facilities are sufficiently provided and there is no merit in this demand.

27. Regarding Conveyance Allowance, Newspaper Allowance, Productivity Payment, Shift Allowance, Over Time , Working days, Late entry, Attendance Bonus, Check Off System, Canteen, Loan facilities, Compensation on Accident or Death, GSLI Premium and fidelity Guarantee Other Demands it is said that they are not just and reasonable. Management for these reasons and for some other reasons has prayed to reject the reference.

28. It is seen from the records that management examined one witness MW1, Mr. S. K. Mishra, Assistant General Manager. He has given detailed evidence and for other demands he has given answer that they are not just. He has also stated about the functioning of the press. Regarding Technology he has given detailed evidence. Regarding Industrial Workmen Grade-I and II he has given detailed evidence and various documents are marked. Both the counsels with consent have marked the documents. He has given evidence about the press at Nasik. Regarding Promotion the claim and the charter of demands does not tally at all. Company is around 6 years old and extended various facilities to the employees. Seniority list is finalized on the request of the union. All the demands are not correct.

29. Against this Union has examined WW1, WW2, WW3. WW2 has stated in his evidence that they are

getting DA which is paid by the Central Government and the same be continued. He has further stated that promotion policy is not at all formulated. WW1 has also given detailed evidence in support of his case. So also is the evidence of WW3.

30. After the close of the evidence I have heard both sides in detail. Both the Counsels have given written arguments. I have read them carefully in detail, I have perused all the documents. Management has relied the following decisions: —

(1) AIR 1963 Supreme Court Pg 1327

(2) AIR 1964 Supreme Court Pg 689

(3) H.C. Bombay 2001 II LLJ Pg 1421

(4) AIR 1972 Supreme Court Pg 1967

31. I have read them carefully.

32. Workmen have relied the following decisions

(i) 1950 LLJ 921 @948

(ii) 1950 11 LLJ 978

(iii) 1950 11 LLJ 1247

(iv) AIR 1970 SC 82

(v) 1972 3 SCC 553

(vi) 1974 3 SCC 330

(vii) 1982 SCC (L&S) 42

(viii) 1983 Lab 1C 1024

(ix) AIR 1991 SC 1173

(x) 1993 I LLJ 965

(xi) 1995 5 SCC 75.

33. I have read them carefully.

34. Keeping in mind the principles held in the decisions relied by the parties, now let us examine the demands of the Union just around. I have compared the figures in respect of production and the Balance Sheet of the Company carefully. The need based minimum wages calculation as on 1-10-1998 is at Ex.W2 and the management is not paying minimum wages though it has capacity to pay the same. The second party has not seriously contested claim of the first party to the effect that the demands should entirely made in compared to the revenue a. per Ex W8. For Grade -I Post the essential qualification prescribed is SSC with 50% marks and certificate from any recognized ITI/NAC in Printing whereas the Grade -II post only 10th Standard as per the deposition of WW2.

35. I have read the evidence of MW1 carefully. He has not stated as to what was the qualification prescribed for Grade-II employees and are failed to produce notification in this regard. Ex.W10 is a comparison of the Vth Pay Commission Recommendation.

36. I have considered documents Ex.WI to Ex.W7 carefully. Ex.W.17 is the report of the SSV Krishna Rao. Considering all this I am of the opinion that the demand of the pay scale of Rs. 4000-100-6000 to the Grade-I employees and Grade-II workmen is Justified and Grade-III employees are entitled 7500-250-12,000 and Grade-IV workmen are entitled pay scale of Rs. 9000-300-14,000 apart from the DA of the Central Government.

37. Accordingly I am of the opinion that the demand in respect of pay revision claimed by the first party workmen is just and entitled for the same. Management is directed to revise the wages as claimed by the workmen and revise the pay scales w.e.f. 1-1-1997.

38. It is only said by the management that pay scale is revised 10% more than the V Pay Commission Recommendation but no material is placed before this Tribunal. I have considered in detail the comparative pay scales as demonstrated by the workmen. Apart from the financial capacity of the Company other aspects are considered keeping in mind the principles held in the various decisions relied by the management.

39. I have said that the management has not proved that it is giving 10% more scale to these employees. Taking all this into consideration demand of revision of wages is held as reasonable and the management is directed to revise the pay scales.

40. After considering entire material and the statements made by the parties, some of the demands of the union are not just. Admittedly the workmen are not entitled for Annual Bonus and other bonus claimed by the Union. It is in evidence that the company has provided sufficient medical facilities to these employees and therefore, Medical Facilities demand is not correct. The demand for Casual Leave of 12 days is just and Earned Leave, Annual Leave with wages of 30 days is just and National holidays per year 12 are sufficient. Demand of Sick Leave for 30 days per year is just.

41. Regarding Seniority, I am of the opinion that the demand made by the union is not reasonable and just. Management is directed to formulate some rules for promotion. Regarding Education Facilities for children management is quite liberal and the demand is rejected. Demand for incentive for Family Planning Programme is rejected. Demand for Education Facilities for employees is rejected. Demand for Conveyance is not just and the same is rejected. Demand regarding Newspaper Allowance and Productivity Payment is rejected. Shift allowance claimed by the workman is not just and that demand is rejected. Overtime demand is also not just and rejected. The demand for 5 days week in the given circumstances is not just because it will affect the production of the Company. The demand of Attendance Bonus is also not just and the same is not given. Regarding wages of strike period that demand is not just and refused. Demand for Incentive for Family Planning Programme is not just and it is not allowed. Separate Rest Room for workmen (Ladies and Gents) is not

just and not allowed. Demands for Educational Facilities, Conveyance, Newspaper Allowance, Productivity Payment, Shift Allowance and Overtime Allowance is also not allowed. Demand for late entry is not just because it affects the companies production. Check of System Demand is not granted. Canteen, Loan Facilities are quite sufficient and those demands are not just. Demand in respect of late entry on 3 occasions in a month and 15 minutes for each occasion is just and that demand is allowed. Regarding Compensation to Accident or Death it is restricted to Rs. 3,60,000/- instead of Rs. 5,00,000/- and providing job on compassionate ground is just and is allowed.

42. I have given my best consideration to the material before me and the principles held in the decisions relied by both sides, the demand which are just and reasonable are given w.e.f. 1-1-97. Accordingly I proceed to pass the following Order :

ORDER

The Second party management is directed to revise the pay scale and many other relief granted to the workmen w.e.f. 1-1-97. Secondly arrears of pay in respect of those demands, which are held just and reasonable, are awarded. Accordingly reference is disposed off.

(Dictated to PA, transcribed by her, corrected and signed by me on 4th April 2003)

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 29 अप्रैल, 2003

का. आ. 1499.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वैश्य बैंक लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, बैंगलौर के पंचाट (संदर्भ सख्या सी०आर० नं० 33/1987) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-04-2003 को प्राप्त हुआ था।

[सं. एल-12012/43/84-डी. IV/(ए)/आई.आर.(बी-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 29th April, 2003

S.O. 1499.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (C. R. No. 33/1987) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Vysya Bank Ltd. and their workman, which was received by the Central Government on 28-04-2003.

[No. L-12012/43/84-D. IV/(A)/IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated the 3rd April, 2003

PRESENT :

HON'BLE SHRI V. N. KULKARNI, B. Com. L.L.B, Presiding Officer

CGIT-CUM-LABOUR COURT,

BANGALORE

C.R. No. 33/1987

IPARTY : The General Secretary, Vysya Bank Employees Union, Vysya Bank Building, 489, Avenue Road, Bangalore-560002

IIPARTY : The Chairman, Vysya Bank Ltd, Administrative Office, St. Marks Road, Bangalore-560001

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order. No. L-12012/43/84-D. IV(A) dated 26th June, 1985 for adjudication on the following schedule :—

SCHEDULE

"Whether the action of the management of Vysya Bank, Bangalore to award the punishment of dismissal from service to Shri K.C. Raghnath Reddy, Clerk, Hubli Divisional Office with effect from 25-10-1982 is justified? If not, to what relief is the workman concerned entitled?"

2. The first party union workman was working with the Management. Charge Sheet was issued and enquiry was conducted against the workman. On the basis of the report of the Enquiry Officer his services were dismissed and therefore General Secretary of the first party union has raised this Industrial Dispute.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. The case of the workman in brief is as follows :—

5. The case of the Union in brief is as follows :

6. The first party union workman was working as a Clerk in Divisional Office of the second party at Hubli. He was also an active member of the Vysya Bank Employees Union at Hubli and was also the Executive Committee Member.

7. It is the further case of the union that the charge sheet was given alleging that a sum of Rs. 240/- excess Traveling Allowance and Batta paid to him should not be debited in his Savings Bank Account No. 2535 opened by him at the Hubli Branch of the said Bank and when the debit slip for the said amount along with the salary slips of all the employees of the Divisional Office including the

workman was received, the workman had no balance amount in his SB Account and he failed to deposit the said amount.

8. It is the further case of the workman that the allegations that he wanted to open another account is not correct and the charges were vague and the allegations that the workman went to the cabin of the Manager and shouted at the Manager at the top voice in front of the customer is not correct. The workman submitted reply to the charge sheet. Enquiry was initiated and the enquiry is not fair and proper.

9. Regarding enquiry he categorically alleged that he was placed Ex-parte and enquiry was concluded. No lists of witnesses and documents were given. Charges are baseless. Workman has not shouted and abused filthy language to the Manager. Union for these reasons and for some other reasons has prayed to pass award in its favour.

Against the case of the Management is as under :

10. The dispute is raised after taking a long time from the date of alleged dismissal. Details are given in Para 2 of the Counter.

11. It is the further case of the management that, Second Party is a Banking Institution registered under the Indian Companies Act and Banking Company Regulation Act. It is a Public Limited Company. The Officials are expected to work honestly. The workman was not honest in his work. Charge sheet is correct and during the enquiry charges are proved and the action of the Management is correct. Full opportunity was given to the workman to defend himself during the enquiry. Misconduct is proved. The management has nothing to do with the Union activities. Charges leveled against the workman are proved and the order of dismissal is proper. Management for these reasons and for some other reasons has prayed to reject the reference.

12. It is seen from the records that this Tribual by its order dated 31st July, 1987 has held that the Domestic Enquiry is fair and proper and the same is in accordance with the principles of natural justice.

13. It is seen from the records that the union filed Writ Petition No. 12676 of 1988 and according to the order of High Court of Karnataka, the enquiry held is not fair and proper and the matter was remanded. After the remand management examined MW1, Shri K.A. Krishnaiah. Management also examined G. Vijaya Kumar and N.A. Shankar Narayana Shetty.

14. Against this workman gave evidence. General Secretary has also given affidavit evidence. I have heard both sides in detail. Management has given written argument and relied the following decisions :

(1) 1995 I LLJ Page 233.

(2) 1988 I LLJ Page 1217.

(3) 2001 LLR 1154.

15. I have read them carefully. I have read the written arguments and I have heard the learned counsel appearing for the workman. The learned Counsel appearing for the workman has submitted that he will also file written arguments. But he has not filed any written arguments.

16. MW1 has stated in detail that on 25-8-1980 he was on duty and the workman came to the branch at 11.30 AM and demanded the Manager to issue cheque to his new Savings Account. He was sitting in the Manager Cabin. Manager informed the workman that he will seek information from the Divisional Officer inorder to give the cheque book. But the first party abused the Manager in filthy language such as shut up, do not talk and also said non sense. Again on 30-8-80 first party entered the Cabin of the Manager and said Idiot, Bastard and when Manager asked him to go out MW3. He has also said in detail about the incident. He said that first party had SB Account in his branch and the salary of employees of Divisional Office was credited to their respective accounts maintained at the Branch. On 29-7-1980 he had issued advice of first party salary to be credited to his account and he also received debit advice of first party for Rs. 240/- to be recovered from his salary. Workman had given authorization to transfer Rs. 230/- from his account to his Colleague Ramesh Kumar though there was no balance in his account. He informed Ramesh Kumar that there is no provision to debit Rs. 240 after the above payments. He has given report on 20-8-80 and first party deposited Rs. 50/- with the cashier for crediting the same. The cashier was under the impression that the amount was credited to his SB Account. He has given detailed report of the challan. The papers are not signed by the Branch Manager who is the competent authority to give permission to pen such an account. In order to avoid recovery of Rs. 240/- over draft, first party wanted to open second account. When Rs. 240/- was transferred to Ramesh Kumar's Account there was nobalance in the account of the first party. He further stated that first party came to his Cabin and demanded cheque book with a very high voice and the workman misbehaved with Manager in the presence of customers. He also said 'bastard' etc. Customers have given report.

17. Against this, workman has given detailed evidence. The General Secretary has also given affidavit evidence. Workman being an employee of the Banking institution was expected to work honestly and not to misbehave with his superiors but in the instant case workman has misbehaved with the Manager in respect of transaction of Rs. 240.

18. Now that the DE is held as not fair and proper and the matter is remanded by the High Court of Karnataka we have to consider the evidence before us in order to see whether misconduct is proved and charges are established.

19. We have the evidence of management witness, MW2, MW3 and MW4 who have categorically stated that

the workman has committed misconduct by avoiding payment of Rs. 240/-. According to the management employees are not allowed to open a second account. But the first party has opened second account. The workman demanded cheque book but it was informed by the Manager that he will seek direction from the Divisional Office.

20. On 25-8-80 at 11.45 AM the workman abused the Manager. We are also having the evidence of G. Vijaya Kumar, who has stated in detail about the operation of SB Account in Hubli Branch. He received debit advice of first party for Rs. 240/- to be recovered from his salary. First party immediately withdraw his salary amounting to Rs. 650/- from his SB Account. The first party had given authorization to transfer Rs. 230/- from his account to the account of Shri Ramesh Kumar and there was no balance to recover Rs. 240/- after transferring Rs. 230/- to the account of Ramesh Kumar. This is how the workman wanted to avoid payment. Misconduct is proved and the management has lost confidence in the workman. There was also criminal case but that was compounded.

21. Through out it is seen from the records that the workman has protested against the recovery of Rs. 240/-, which was paid in excess to him. The intention of the workman is not fair. Further the intention of the workman in opening the Second Account was to avoid recovery of Rs. 240/- and all that is established by the management therefore, misconduct is proved and the management lost confidence from its employee who wanted to cheat the management.

22. Misconduct committed by the first party is serious in nature. The evidence and records are sufficient to prove the charges and I am of the opinion that the Management has proved the case against the workman.

23. Keeping in mind the principles held in the decisions relied by the 2nd party I am of the opinion that the misconduct is proved. It is in evidence that since the dismissal, the first party workman is practicing as an Advocate and he is well placed. Since his dismissal the first party workman is practicing advocate even if it is said the management is harsh, the workman is not interested in clerical job. On the other hand with his experience as advocate he wants to harass the management. Therefore, I am of the opinion that this reference has no merit.

24. Considering all this I am of the opinion that the Management has proved misconduct and the workman is not entitled for any relief. Accordingly I proceed to pass the following Order :

ORDER

The Reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 3rd April, 2003).

V. N. KULKARNI, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का. आ. 1500.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय ई.सी.एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल (संदर्भ संख्या 16/1988) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/323/87-डी- IV(बी)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1500.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/1988) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/323/87/D-IV/(B)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL ASANSOL

In the matter of a reference U/S.10(1) (d) (2A) of I.D. Act, 1947

Reference No. 16 of 1988

Parties : Employers in relation to the management of Chinakuri 3 Pits Colliery of M/s. Eastern Coalfields Ltd.

And

Their Workmen.

Present : Shri Ramjee Pandey, Presiding Officer

Appearances :

For the Employers : Shri P. Goswami, Advocate

For the Union/Workman : Shri N. Ganguly, Advocate

State : West Bengal Industry: Coal

Dated, the 9th April, 2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its order No. L 24012(232)/87 D-IV(B) dated 26-2-1988, referred the following dispute for adjudication by this Tribunal:

"Whether the action of the management of Chinakuri 3 Pits Colliery of M/s. E.C. Ltd., P.O. Sunderchak, Dist., Burdwan in dismissing from service Sri Bharat Ghosh, clerk is justified? If not, to what relief the workman concerned is entitled"?

2. After receiving the summons issued by the tribunal both the parties appeared through their respective

representatives, filed their written statements and contested the dispute. Lastly Sri P. Goswami, Advocate appeared for the management and Sri N. Ganguly, Advocate, appeared for the union before me.

3. The facts of the case in brief, are that the workman, namely Sri Bharat Ghosh, was an employee of M/s. E. C. Ltd. posted as Clerk at Chinakuri 3 Pits Colliery and he was dismissed from service on the charge that in the capacity of the clerk of the company he prepared false bills i.e. Bill No. 87 dated 23-5-84 for Rs. 1407.77 in the name of Srinarayan, L/Driver, Bill No. 7 dated 5-10-84 for Rs. 1256.83 in the name of Kati Majhi, Driller and Bill No. 10 dated 5-10-84 for Rs. 267.34 in the name of Bodi Kora, M. Khalasi as unclaimed wages though no such wages was credited in the unpaid wage register of the colliery and accordingly he was charged for preparing fictitious bills and thereby withdrawing the amount putting fake L.T.I. on the bills and he misappropriated the money amounting to Rs. 2931.94.

4. The case of the union (workman), in brief, is that the workman has been illegally and wrongfully dismissed from service by order dated 5-7-86 and he has been victimised for his trade union activities. The allegation of charges against the workman are false and baseless. When the workman was issued charge-sheet for the alleged misconduct he submitted his reply on 28-9-85 denying all the charges, but the management did not consider the same properly and started a domestic enquiry. The preparation of bills was not the part of the duty of the workman but due to dirth of clerical staff the workman was ordered to prepare bills including vouchers and he was entrusted with other works as an additional burden by the order of Welfare Officer. Any work done by the workman was subject to verification of Welfare Officer and after comparing the same with unclaimed register the welfare officer recommended for payment by way of endorsement and after final signature of the manager the concerned clerk used to make the payment. The further case of the workman is that the workman has no liability to make payment of unclaimed vouchers of Srinarayan, Kati Majhi and Bodi Kora. The alleged bills/vouchers were not fictitious and no amount was come out of the hands of the company by payment by the clerk. It is further stated that the three workmen in whose names the vouchers are alleged to be prepared have not been examined by the Enquiry Officer and as such the evidence during enquiry was not complete and the Enquiry officer wrongly submitted the enquiry report although the charges against the workman were not established. It is further stated that the payment of Rs. 1256.83 were although made but the same was refunded by the pay clerk to the cashier concerned and no liability can be fixed on the workman for that amount. As regards the amount of Rs. 267.34 in the name of Bodi Kora the same was rightly prepared and paid to him. It is further stated that the order of dismissal of the workman from service passed by the manager is illegal, baseless and unjustified and accordingly a prayer has been made to set aside the order of dismissal with all the benefits of back wages.

5. The case of the management, in brief is that during course of checking it was detected by the management that the workman prepared false bill No. 87 dated 23-5-84 for Rs. 1407.77 against the name of Srinarayan, Loco Driver, Bill No. 7 dated 5-10-84 for Rs. 1256.83 against the name of Kati Majhi, driller and Bill No. 10 dated 5-10-84 for Rs. 267.34 against the name of Bodi Kora, Haulage Khalasi as unclaimed wages, although no such unclaimed wages were credited in the unpaid register of the colliery. The bills prepared by the workman were fictitious and by those fictitious bills by putting fake L.T.Is. on the same the workman misappropriated the amount of Rs. 2931.94 from the company. The workman was issued charge-sheet but his explanation was found unsatisfactory and hence a regular domestic enquiry was conducted. Notice of enquiry was sent to the workman and the workman appeared before the Enquiry Officer and contested the same. The workman was given full opportunity to be heard and after concluding the enquiry the Enquiry officer submitted the report with a finding that the charges against the workman were established. After considering the enquiry report the manager of the colliery came to the conclusion that the charges against the workman have been established and considering the fact that the charges were grave and serious by order dated 5-7-86 he dismissed the workman from service. The order of dismissal is legal and justified. The management has denied the statements and allegations made by the union in the written statement.

6. After hearing both the parties in details on the point of fairness and validity of the enquiry proceeding the then Presiding Officer by order dated 13-3-90 came to the conclusion that the enquiry proceeding was valid and the enquiry was conducted in accordance with the principle of natural justice.

7. After hearing both the parties the then Presiding Officer finally concluded the reference and passed the award dated 21-6-1990. The Presiding Officer came to the conclusion that the charges against the workman against the workman against voucher No.7 and voucher No. 87 were fully established and agreed with the finding of the Enquiry Officer and after considering the quantum of punishment then learned Presiding Officer came to the conclusion that considering the nature of offence as well as the facts and circumstances on the record the punishment of dismissal was just and appropriate and refused to interfere with the order of dismissal of the workman from service and accordingly held that the action of the management in dismissing the workman from service was justified and the workman was not entitled to any relief.

8. Against the above-mentioned award dated 21-6-90 passed by the then Presiding Officer the workman preferred a writ petition vide C.O. No. 13591 (W) of 1990 before Hon'ble Calcutta High Court and Hon'ble court vide its judgement dated 8-3-2001 quashed a portion of the award upholding the punishment of dismissal awarded by the disciplinary authority and has remanded the matter back to this Tribunal for limited purpose for re-consideration of the punishement under the provisions of Section 11-A of the Industrial Disputes Act, 1947 after giving opportunity to both the parties to make their submissions.

9. A certified copy of the judgement of Hon'ble High Court has been filed by the union. After receiving the judgement of Hon'ble Court both the parties appeared through their respective representatives. As mentioned above Sri P. Goswami, Advocate, appeared for the management and Sri N. Ganguly, Advocate appeared for the union. I heard both the parties in details.

10. From perusal of the judgement of Hon'ble High Court it appears that the workman has attacked the order of dismissal of the workman and the award passed by the Tribunal on the following grounds :

(i) The charge that the workman withdrew the amount covered under the bills has been proved to be false.

(ii) There has been violation of natural justice as the documents asked for by the workman were not called for by the Tribunal in terms of order dated 13-10-88.

(iii) The charge-sheet was issued by the person who is not a disciplinary authority as per the standing orders and before passing the order of dismissal no approvat has been taken in accordance with the standing orders.

(iv) Since the charge is of criminal nature the management authority ought to have initiated a criminal proceeding by lodging F.I.R. which has not been done.

(v) The penalty imposed upon the workman is disproportionate and Sec. 11-A of the I.D. Act has not been considered by the Tribunal.

After hearing learned lawyer appearing before the Hon'ble court on behalf of the workman, the Hon'ble Court came to the conclusion that first point raised on behalf of the workman was not tenable and further came to the conclusion that finding of award with respect to preparation of fictitious bills was correct and the charge has been proved. The grounds 2nd, 3rd and 4th raised on behalf of the workmen were also negatived. However, the last ground taken on behalf of the workman was considered by the Hon'ble Court and Hon'ble Court has come to the conclusion that the Tribunal has not exercised the discretion under Sec. 11A of the I.D. Act and has not assigned any reason for agreeing with the quantum of punishment and has wrongly upheld the order of punishement without giving any reason and hence Hon'ble court quashed a portion of the award of the Tribunal to the extent wherein the Tribunal has upheld the punishment awarded by the disciplinary authority and remanded back the matter with a direction to give a fresh award with respect to the quantum of punishment after hearing both the parties.

11. In view of the direction of the Hon'ble Court only point of consideration is as to whether the punishment of dismissal of the workman from service is shocking and disproportionate to the nature of misconduct or the same is legal and justified. In this regard learned lawyer for the union submitted that there is nothing on record to show that the workman ever committed any misconduct in past. He further submitted that the charge of misappropriation of money also has not been established against the workman and hence the charge proved against the workmen is not a gross misconduct attracting punishment of dismissal from service. Learned lawyer further submitted that all the circumstances were considered by the Hon'ble Court and the Hon'ble Court after considering all the circumstances set aside the portion of award upholding the punishment of dismissal and this very fact indicates that by implication the Hon'ble Court had a view that the punishment of dismissal from service was not justified. On the other hand, learned lawyer for the management submitted that no doubt there is nothing on the record to show that the workman committed any misconduct in past and the charge of misappropriation of money has not been established but the finding of award passed by the Tribunal to the effect that the fabrication of fictitious bills by the workman has been established, has been approved by the Hon'ble Court and the nature of this charge itself is sufficient to award a maximum punishment. Learned lawyer submitted that preparation of fictitious bill by a clerk of the company indicates that he had dishonest intention and the act of the workman involved moral turpitude. The learned lawyer further submitted that from the judgement of Hon'ble Court it does not appear that the Hon'ble Court was of the view that the punishment was unjustified rather in last but para 2 of the judgement the Hon'ble Court has given liberty to this Tribunal either to uphold the punishment or modify the same by giving proper reason. The learned lawyer submitted that the nature of charge proved against the workman is a gross misconduct attracting maximum punishment of dismissal from service and hence the punishment of dismissal from service is legal and justified.

12. In view of the contrary submissions made by the parties I carefully considered the materials and circumstances on record. It has been established against the workman that he prepared fictitious bills for payment of certain amount in the name of some workers and this finding has been approved by the Hon'ble Court. The learned lawyer for the management has rightly submitted that the preparation of fictitious bills cannot be with good intention and the same indicates that having a dishonest intention the workman prepared the fictitious bills. No doubt, past record of the workman may be considered at the time of awarding punishments but simply because the fact that there is no misconduct on the part of the workman in past the gravity of present misconduct cannot be minimised. From perusal of the judgement of the Hon'ble Court it is clear that the Hon'ble Court has given liberty to the Tribunal either to uphold the punishments or modify the same but with reasons. In my opinion, the nature of misconduct proved against the workman is of grave nature and it involves moral turpitude of the workman. The misconduct of fabricating fictitious bills of the company in the capacity of a Clerk incharging is a gross misconduct attracting maximum punishment of dismissal and hence I find and hold that the action of the management dismissing the workman from service is justified and the same is upheld. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer.

[332G1/03-4]

नई दिल्ली, 30 अप्रैल, 2003

का.आ. 1501.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल (संदर्भ संख्या 1/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/34/2001-आई आर(सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1501.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/34/2001-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL.

In the matter of a reference U/S. 10 (1)(d) (2A) of I. D. Act, 1947

Reference No. 1 of 2002

Parties : Employers in relation to the management of the Agent J. K. Ropeways, M/s. E.C. Ltd.

AND

Their Workmen

Present : Shri Ramjee Pandey, Presiding Officer

Appearances :

For the Employers : Shri P.K. Das, Advocate

For the Union : Shri S.K. Pandey, Chief General Secretary, Koyla Mazdoor Congress

State : West Bengal : Industry : Coal

Dated, the 21st March, 2003

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/34/2001 IR (C-II) dated 12-12-2001, has referred the following dispute for adjudication by this Tribunal :

> "Whether the action of the management of J.K. Ropeways under M/s. E.C. Ltd. in dismissing the service of Sri Nunia w.e.f. 11-3-1998 is legal and justified? If not, to what relief he is entitled to?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. Sri P.K. Das, Advocate, appeared for the management and Sri S.K. Pandey, Chief General Secretary of K.M.C. appeared for the union. Both the parties filed their written statement and contested the dispute.

3. The facts of the case, in brief, are that the workman, namely, Ramnath Nunia, was an employee of M/s. E.C. Ltd. and he was posted as B/M-H/A at JK Ropeways of M/s. E.C.L. He was dismissed from his service on the charge of unauthorised absence from 24-1-19[illegible] to 3-4-1997. The union has challenged the order of dismissal. It will be relevant to mention here that in the schedule of reference sent by the Ministry Ramnath Nunia has been described only as Sri Nunia but both the parties agreed that the man is same and instead of Ramnath Nunia Sri Nunia has been wrongly mentioned in the schedule of reference.

4. The case of the union, in brief, is that the workman was sick due to which he became absent from his duty and when he was declared fit he reported for his duty with the paper of medical treatment, but he was not allowed rather the management issued a chargesheet alleging that the absence of the workman was unauthorised. Without giving notice to the workman the management concluded ex-parte enquiry and the workman was not given opportunity to be heared and naturally the principle of natural justice was denied. No second show-cause notice was issued to the workman before passing the order of dismissal and accordingly the order of dismissal is illegal and unjustified. A prayer has been made to direct the management to reinstate the workman in service with back wages.

5. The case of the management, in brief, is that the order of dismissal is legal and justified and in accordance with the provisions of the Standing Orders applicable to the company. The absence of the workman was unauthorised and accordingly a chargesheet was issued to him and sent by registered post on his home address, but the workman intentionally avoided to receive the chargesheet. No reply was submitted by the workman against the allegation in the chargesheet nor he reported for his duty and hence the enquiry was started. The competent authority issued the notice of enquiry to the workman on his home address but the same was also intentionally avoided and hence the enquiry was concluded ex-parte. During enquiry the Enquiry Officer came to the conclusion that the charge against the workman was established and hence considering the fact that the charge against the workman was established and also considering the fact that the workman was a habitual absentee the management dismissed the workman from service. The plea of the union that the workman was ill has been denied by the management and accordingly it has been submitted that the order of dismissal is illegal and unjustified.

6. Although the union has pleaded in the written statement that the workman was not given opportunity to

be heard but at the time of hearing on the point of validity of the enquiry proceeding the union did not challege the same rather admitted that there was no violation of principle of natural justice and by order dated 9-10-2002 the enquiry proceeding has been held to be valid.

7. First point for consideration is as to whether the charge against the workman has been established and the finding of the Enquiry Officer is correct. It is admitted by the union that the workman was absent from his duty from 24-1-1997 to 3-4-1997. It is also admitted that the workman did not adduce any evidence before the Enquiry Officer to support his plea of illness. After perusal of enquiry report I find that there is no evidence on record to show that the workman was sick during the period of his absence and hence the absence of the workman was unauthorised and finding of the Enquiry Officer is correct.

8. Next point for consideration is as to whether the punishment of dismissal is justified or not. In this regard the representative of the union submitted that although the fact of sickness of the workman has not been proved by evidence but only absence from duty in the present nature of job of the workman is not a gross misconduct. On the other hand, learned lawyer for the management submitted that it has been fully established that the absence of the workman for two months ten days was unauthorised. He further submitted that the workman is habitual absentee and in past also he has been punished for similar type of misconduct by stoppage of two increments and hence the order of dismissal from service is legal and justified.

9. In view of the contrary submissions I perused the enquiry report and the materials collected during enquiry. No doubt it has been proved that absence of the workman for more than two months was unauthorised. In his finding the Enquiry Officer has stated that from his past record it is revealed that two annual increments of the workman were stopped for his unauthorised absence. But from perusal of the chargesheet it is clear that the workman was not chargesheeted for misconduct or punishment awarded to him in past. No paper of past record of the workman has been brought on record. The Agent of J.K. Ropeways issued a letter dated 10-3-1998 informing the workman that considering the seriousness of the charges as established during enquiry he had been dismissed from service, but that order of dismissal also does not disclose that his past record was considered for awarding punishment to the workman. There is nothing on record to show that before passing the order of dismissal the workman was served with a notice disclosing the intention of the competent authority to consider his past record. No doubt, past record of the workman cannot be relevant during enquiry for the present misconduct and the same may be relevant for the purpose of the quantum of punishment but the workman must be given opportunity to be heard on the allegation in past also, but that opportunity was not afforded to the workman. There is nothing on the record to show that the workman was earlier punished by stoppage of two increments after following the principle of natural justice and hence in view of the above discussion the past record of the workman cannot be considered for the purpose of quantum of punishment.

10. In my opinion, present absence of the workman for more than two months is not a gross misconduct awarding maximum punishment of dismissal from service. Hence the order of dismissal passed by the management is illegal and unjustified and accordingly the same is set aside. The management is directed to reinstate the workman in service, but in the facts and circumstances of the case without back wages. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का.आ.1502.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल (संदर्भ संख्या 12/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/237/2000-आई आर (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1502.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/237/2000-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

In the matter of a reference U/s. 10 (1)(d) (2A) of I.D. Act, 1947

Reference No. 12 of 2001

Parties : Employers in relation to the management of E.C. L.

AND

Their Workmen.

Present : SHRI RAMJEE PANDEY, Presiding Officer

Appearances :

For the Employers : Shri P. K. Das, Advocate.

For the Union/Workman : Shri R. Kumar,
General Secretary,
K. M. C.

State : West Bengal. : Industry : Coal

Dated, the 31st March, 2003

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour by its Order No. L-22012/237/2000-IR (CM-II)) dated 27-4-2001, has referred the following dispute for adjudication by this Tribunal :

"Whether the action of the management of Jambad Colliery of M/s. Eastern Coalfields Limited, in dismissing Shri Jagdish Roy, Underground Loader from service vide order dated 24-2-88 is legal and justified? If not, what relief the workman is entitled?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. Sri P.K. Das, Advocate, appeared for the management and Sri R Kumar, General Secretary of K.M.C. appeared for the union. Both the parties filed their respective written statements and contested the dispute.

3. The facts of the case, in brief, are that the workman, namely, Jagdish Roy, was a permanent employee of M/s. E.C.L. posted as Underground Loader at Jambad Colliery. After obtaining authorised leave from 6-4-98 to 13-4-98 the workman went to his native village and thereafter he remained absent from duty till 4-7-98. He has been dismissed by the management from service on the charge that he overstayed and became absent from his duty from 14-4-98 to 4-7-98 without any leave or prior intimation to the management and the absence of the workman during the period was unauthorised. The union has challenged the order of dismissal.

4. The case of the union, in brief, is that the workman obtained leave for the period from 6-4-98 to 13-4-98 and went to his native home but there he fell ill and was undergoing treatment due to which he could not attend the duty from 14-4-98 to 4-7-98, but he informed the management by a letter through registered post about his sickness. But in the meantime the management issued charge-sheet alleging that the workman over-stayed and after [illegible] enquiry the workman was dismissed from [illegible] stated that the domestic enquiry was [illegible] and the workman was not given [illegible] himself. It has been further pleaded [illegible] reason before the workman to be absent [illegible] duty and meet risk of non-payment of wages if he was not really sick. The order of dismissal is illegal and unjustified and the same is harsh and disproportionate to the nature of misconduct. A prayer has been made to direct the management to reinstate the workman in service with back wages.

5. The management has admitted that the workman was granted leave for the period 6-4-98 to 13-4-98. Further case of the management, in brief, is that thereafter also the workman over-stayed and became absent from his duty from 14-4-98 to 4-7-98 without any leave or information to the management and hence the absence of the workman during this period was unauthorised. The management issued a charge-sheet on the allegation of misconduct of unauthorised absence from duty and the chargesheet was sent to the workman at his home address by registered post, but the workman failed to submit any reply. Thereafter a domestic enquiry was started before which the management issued notice of enquiry but despite receiving the notice of enquiry the workman did not participate and consequently the enquiry was concluded ex-parte. During enquiry the charge of misconduct of the workman was established on the basis of which the workman was dismissed from service by the management. It is further stated that the workman was given sufficient opportunity to defend himself. The plea of the union that the workman had fallen ill has been denied by the management and according to the management this plea is false and the workman was not under treatment. it is alleged that no infomation was received to the management about sickness of the workman. it is further stated that the punishment of dismissal from service is legal and justified and the workman is not entitled to any relief.

6. Although the union has pleaded in the written statement that the workman was not given opportunity to defend himself but at the time of hearing on the point of fairness and validity of the enquiry proceeding the union did not challege the same and hence by order dated 19-2-2003 the enquiry proceeding has been held to be fair and valid.

7. First point for consideration is as to whether the charge against the workman has been established and the finding of the Enquiry Officer is correct. It is admitted fact that the workman was absent from duty from 14-4-98 to 4-7-98 without any leave. In defence of the workman the union has pleaded that the workman was sick during this period and due to sickness to could not attend duty. It has been already held that the enquiry proceeding is valid. From perusal of the enquiry report and the materials produced during the same it appears that the workman did not appear before the Enquiry Officer and hence he could not produce any evidence in support of his defence that he was sick and due to sickness he could not attend the duty whereas on behalf of the management the Head Clerk, of the company, Debidas Mishra, deposed before the Enquiry Officer and has proved the fact that the workman was absent from 14-4-98 to 4-7-98 without any leave. He has also deposed that no information was sent by the workman about the cause of his absence after expiry of the period of his sanctioned leave and hence the workman could not explain any reason about his alleged absence

and hence it has been established that the absence of the workman from 14-4-98 to 4-7-98 was unauthorised and the finding of the Enquiry Officer in this regard is correct.

8. Next point for consideration is as to whether the punishment of dismissal is justified or the same is harsh and disproportionate to the nature of misconduct. The representative of the union submitted that the total period of unauthorised absence is for two months and twenty days and although the same has not been proved by the evidence but due to sickness of the workman and hence the punishment of dismissal from service is too harsh and disproportionate to the nature of misconduct as in past no misconduct was committed by the workman. Learned lawyer for the management fairly admitted that there is nothing on the record to show that the workman had committed any type of misconduct in past. The chargesheet also does not disclose the allegation of any past misconduct. During enquiry proceeding also nothing could be brought to show that in past the workman had committed any misconduct. In this view of the matter unauthorised absence of the workman below a period of three months is not a gross misconduct attracting any maximum punishment of dismissal from service, hence I find and hold that the order of dismissal is disproportionate to the nature of misconduct and the action of the management dismissing the workman from service is unjustified. Hence the order of dismissal is set aside and the management is directed to reinstate the workman in service. It has been neither pleaded nor proved that the workman was gainfully employed anywhere during the period after his dismissal, but considering the fact that the charge against the workman has been established he will be entitled to only 40% of the back wages.

In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का.आ. 1503.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल (संदर्भ संख्या 83/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं॰एल-22012/63/2000-आई आर (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1503. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 83/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/63/2000-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

In the matter of a reference U/S. 10 (1)(d) (2A) of I.D. Act, 1947

Reference No. 83 of 2002

PARTIES: Employers in relation to the management of the Agent Bhanora Colliery of M/s. E.C. L.

AND

Their Workmen.

PRESENT: SHRI RAMJEE PANDEY, Presiding Officer

APPEARANCES:

For the Employers : Shri P.K. Das, Advocate

For the Union : Shri S.K. Pandey, Chief General Secretary, Koyla Mazdoor Congress

State : West Bengal : Industry : Coal

Dated, the 28th March, 2003.

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/63/2001-IR (C-II)) dated 21-8-2000, has referred the following dispute for adjudication by this Tribunal :

"Whether the action of the management of Bhanora Colliery of M/s. E.C. Ltd. in dismissing Sha Gullu Majhi, Timber Mazdoor, w.e.f. 5/6-3-99 is justified? If not, what relief the workman concerned is entitled to?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. The management appeared through Shri P. K. Das, Advocate, and the union appeared through Sri S. K. Pandey, Chief General Secretary of K.M.C. Both the parties filed their respective written statement and contested the dispute.

3. The facts of the case, in brief, are that the workman, namely, Gullu Majhi, was a regular employee of M/s. E.C. Ltd. posted as Timber Mazdoor at Bhanora colliery under Sripur Area. He was dismissed from his service on the charge of unauthorised absence from 2-5-95 to 23-2-98. The union has challenged the order of dismissal.

4. The case of the union, in brief, is that the absence of the workman was not unauthorised rather the workman

was sick and was undergoing treatment, to the Company's Hospital with due information to the management. Whenever he was called by the Medical Officer of the colliery he used to attend him at the colliery dispensary. Actually the workman was suffering from incurable disease and he had applied for employment of his son in his place as per NCWA-V. He was called before the Medical Board for assessment of his physical disability but he was not declared medically unfit although he was not in a position to even work. Due to his medical unfitness the workman died subsequently but after the order of his dismissal. The finding of the Enquiry Officer also discloses that due to sickness and undergoing treatment in colliery hospital the workman became absent from duty. On the basis of the above pleading it has been stated that the order of dismissal is illegal and unjustified and accordingly a prayer has been made to declare that the order of dismissal is unjustified and the management may be directed to offer employment and other benefits to his dependent as per NCWA.

5. The case of the management, in brief, is that the workman became absent from his duty without any prior permission or leave by competent authority and hence his absence was unauthorised and naturally chargesheet was issued, but the reply of the workman was found unsatisfactory and hence the domestic enquiry was started. During enquiry the workman was given full opportunity and after concluding the enquiry the Enquiry Officer submitted his report. The charge of misconduct of the workman was duly established and hence after considering the materials on record the disciplinary authority dismissed the workman from service. The order of dismissal is proportionate and justified. The management has denied the fact pleaded by the union in its defence.

6. At the time of hearing on the point of fairness and validity of the enquiry proceeding the union did not challenge the same. From the enquiry report also it is clear that the workman was given full opportunity and hence by order dated 13-3-2003 the enquiry proceeding has been held to be fair and valid.

7. First point for consideration is as to whether the management has been able to establish the charge of unauthorised absence of the workman and as to whether the finding of the Enquiry Officer is correct. It is admitted fact that the workman was absent from his duty from 2-5-95 to 23-2-98. It is also admitted that the workman had not obtained leave for that period. Although the learned lawyer for the management submitted that the absence of the workman was unauthorised and the Enquiry Officer has come to the conclusion that the charge has been established but the representative of the union submitted that during enquiry all the witnesses examined on behalf of the management have supported the fact that the workman was sick and was undergoing treatment in Central Hospital, Kalla of the Company. No witness of the management has come to support the fact that the workman was no sick and he was not undergoing treatment in the hospital and hence under the circumstance beyond the control of the workman he was compelled to be absent from his duty and the Enquiry Officer also has given a finding to the effect that the fact of illness of the workman during whole period of his absence has been established. In view of contrary submissions I perused the enquiry report and the evidence collected during enquiry. During his statement before the Enquiry Officer the workman has stated that due to illness he could not attend his duty from 2-5-95 and he was under the treatment of Central Hospital, Kalla. He also reported in colliery dispensary on 5-6-95, 29-3-96, 6-9-97 and 12-1-98 and he produced xerox copies of same treatment papers from Central Hospital, Kalla. P.P. Mukherjee and Mukhram Harijan both workers of the company have given evidence on behalf of the management. P. P. Mukherjee was working as a cleak in Personnel Department and Mukhram Harijan was a Compounder at Bhanoru colliery dispensary. Both of them have fully supported the fact that the workman was sick and was undergoing treatment in the company's hospital. Mukhram Harijan produced the details of treatment of the workman. In his finding the Enquiry Officer has also come to the conclusion that the witnesses of the management have proved the fact that the workman was sick and was undergoing treatment in Central Hospital, Kalla, and the Enquiry Officer has come to a definite opinion that the charge of unauthorised absence of the workman could not be fully established. In view of above discussions I find that it has been proved by the evidence of the management itself that the workman did not avoid to attend the duty deliberately rather due to the fact that he was sick and was undergoing treatment in the company's hospital and due the circumstances beyond his control he was compelled to be absent and the finding of the Enquiry Officer is also consistent with the defence of the union and hence no misconduct on the part of the workman has been established and there was no occasion before the management to award any type of punishment to the workman. Hence, I find and hold that the action of the management of Bhanora in dismissing Gullu Majhi is illegal and unjustified and accordingly it is set aside.

8. From the statements of the union given in para 6 of its written statement it is clear that the workman died after the year of dismissal and have there is no question of direction of reinstatement. However, it has been held that the order of dismissal is illegal and unjustified and hence the workman was entitled to get full back wages from the date of his dismissal. Since the workman has died his legal heirs are entitled to get full back wages of the workman from the date of his dismissal till the date of his death and accordingly the management is directed to make payment to the legal heirs of the workman. Although in its written statement the Union has made a prayer to direct the management to offer employment to the dependent of the workman but the Government has not refunded this aspect of the matter for decision and hence this issue cannot be

decided in this case. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का.आ. 1504.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल (संदर्भ संख्या 12/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/131/2001-आई आर (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1504. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/131/2001-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

In the matter of a reference U/s. 10 (1)(d) (2A) of I.D. Act, 1947.

Reference No. 12 of 2002

PARTIES : Employers in relation to the management of the Nimcha Colliery of M/s. E.C. L.

AND

Their Workmen

PRESENT : Shri Ramjee Pandey, Presiding Officer

APPEARANCES :

For the Employers	:	Shri P. Goswami, Advocate
For the Workman/ Union	:	Shri S.K. Pandey, Chief General Secretary, Koyla Mazdoor Congress.
State : West Bengal	:	Industry : Coal

Dated, the 31st March, 2003

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/131/2001-IR (C/M-II)) dated 11-6-2002, has referred the following dispute for adjudication by this Tribunal :

"Whether the action of the management of Nimcha Colliery under E.C. Ltd. in dismissing Sri Baidyanath Bouri MC Loader from service is legal and justified? If not, to what relief the concerned workman is entitled to?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. Sri P. Goswami, Advocate, appeared for the management and Sri S.K. Pandey, Chief General Secretary of K.M.C. appeared for the union. Both the parties filed their respective written statements and contested the dispute.

3. The facts of the case, in brief, are that the workman, namely, Baidyanath Bouri was a Permanent employee of M/s. E.C.L. posted as MC Loader in Nimcha Colliery. He was dismissed from his service on the charge of unauthorised absence from 27-3-99 to 25-5-99 and the union has challenged the order of dismissal.

4. The case of the union, brief, is that the workman was ill and suffering from Jaundice for which he was undergoing medical treatment due to which he became absent from duty during the alleged period. The workman submitted the Medical Certificate issued by the Doctor but he was served with a chargesheet dated 25-5-99 for alleged unauthorised absence. The workman submitted his reply to the chargesheet and during enquiry he participated and produced medical certificate in support of his illness but inspite of the above facts the Enquiry Officer gave an opinion about the misconduct of the workman and hence the dismissal of the basis of said enquiry report is illegal and unjustified. Accordingly a prayer has been made to direct the management to reinstate the workman in service with back wages.

5. The case of the management, in brief, is that the workman became absent without any leave or prior intimation to the management and hence the absence of the workman was unauthorised. Accordingly he was charge-sheeted and thereafter a domestic enquiry was started. Although Enquiry Officer sent the notice of enquiry but inspite of receiving the notice the workman did not turn up on 6-12-99 but on 31-3-2000 he alongwith his co-worker Shankar Singh appeared before the Enquiry Officer. During the enquiry the misconduct of the workman was established and the enquiry Officer submitted the report. Considering the fact that the misconduct of the workman was established he was punished by order of dismissal. It has been further stated that by his letter dated 12-6-2000 and 15-6-2000 the workman admitted his misconduct. Although the Enquiry Officer considered the sick certificate produced by the workman in his defence, but genuisness of the same was suspected by the Enquiry Officer as the workman could not prove the authenticity of the sick

certificate. In past also the workman had only 81 days attendance in 1997 and 43 days attendance in 1998. Although the union has pleaded that the workman was suffering from Jaundice, but the sick certificate does not corroborate same rather it speaks otherwise and hence the Enquiry Officer correctly suspected authenticity of the same. The punishment of the dismissal is in accordance with the misconduct and the same is legal and justified.

6. At the time of hearing on the point of fairness and validity of the enquiry proceeding the union did not challenge the same and hence by order dated 24-3-2003 the enquiry proceeding has been held to be fair and valid.

7. First point for consideration is as to whether the charge against the workman has been established and the finding of the Enquiry Officer is correct. It is admitted by the union that the workman was absent from his duty from 27-3-99 to 25-5-99. It is also admitted that the workman had not obtained leave for that period. In defence of the workman the union has taken the only plea that the workman was sick and under medical treatment and hence he could not attend the duty. The representative of the union submitted that during enquiry the workman has stated that due to sickness he became absent from his duty and in support of his sickness he produced the sick certificate issued by the doctor and the fact of production of the sick certificate by the workman has been mentioned by the Enquiry Officer in the enquiry report but without considering the same and without assigning any reason the Enquiry Officer did not place any reliance on the sick certificate and has wrongly given a finding that the charge against the workman has been estabilshed. He further submitted that actually the fact of sickness the workman has been proved as in support of his sickness the workman produced the sick certificate genuineness of which has not been contradicted by the management and hence the finding of the Enquiry Officer is without application of mind and the same is not in accordance with the material on record. On the other hand, the learned lawyer for the management submitted that the Enquiry Officer has considered the sick certificate produced by the workman but he did not place reliance upon the same due to the reason that the suspected the genuineness of the same and hence the finding of the Enquiry Officer is correct. From persual of the enuiry report it is clear that the workman has stated before the Enquiry Officer that he became absent from duty due to his prolonged sickness in support of which he produced the sick certificate of Dr. Swrup Gandhi, DHMS. The sick certificate indicates that the workman was getting medical treatment of viral hepatitis. Nowhere in the enquiry report the Enquiry Officer has suspected the authenticity of the sick certificate rather the Enquiry Officer has given the opinion that workman could not establish that long period of sickness of the workman was authentic.

In my opinion, the submission of the learned lawyer and the plea of the management taken in the written statement to the effect that sick certificate does not indicate the fact that the workman was suffering from Jaundice, is not correct. The term Jaundice Hepatitis are although different terms but they have similar meaning. From perusal of the Enquiry report it is clear that the Enquiry Officer has not assigned proper reason for not accepting the sick certificate as well as the statement of the workman that he was sick, inspite of the fact that no contrary evidence has been brought on record. In this view of the matter I find and hold that finding of the Enquiry Officer is against the weight of evidence on record and the same is incorrect.

8. In view of the fact that it has been held above that the misconduct of the workman has not been established and the finding of the Enquiry officer is not correct, no misconduct on the part of the workman has been established. The only fault on the part of the workman is that he did not inform the management about his absence due to his sickness. No reason has been assigned by the workman as to why he did not inform the management about his sickness, but since the misconduct of the workman has not been established there was no occasion to the managment to award punishment of dismissal from service of the workman. In this view of the matter I find and hold that the order of dismissal is illegal and unjustified. Hence, the order of dismissal is set aside and the management is directed to reinstate the workman in service, but considering the fact that there is fault on the part of the workman that he did not give information to the managment about his sickness he will get only 60% of back wages. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का.आ. 1505.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद (संदर्भ संख्या 99/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2003 को प्राप्त हुआ था।

[सं. एल-22012/157/2000-आई आर (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1505. —In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Govemment hereby publishes the award (Ref. No. 99/2000) of the Central Govemment Industrial Tribunal-cum-Labour Court, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-4-2003.

[No. L-22012/157/2000-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL ASANSOL

In the matter of a reference U/S. 10 (1)(d) (2A) of I.D. Act, 1947

Reference No. 45 of 2000

PARTIES: Employers in relation to the management of the Agent New Kenda Colliery, M/s E.C.L.

AND

Their Workmen

PRESENT: Shri RAMJEE [illegible]NDEY, Presiding Officer

APPEARANCES:

For the Employers : Shri P.K. Dass, Advocate.

For the Union/ Workman : Shri R. Kumar, General Secretary, Koyla Mazdoor Congress.

State : West Bengal : Industry : Coal

Dated, the 28th March, 2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/157/2000-IR (C-II)) dated 16/21-11-2000, has referred the following dispute for adjudication by this Tribunal :

> "Whether the action of the management of New Kenda Colliery of M/s. E.C. Ltd. in dismissing Sri Baidnath Nayak, U.G. Trammer from service is legal and justified? If not, to what relief the workman is entitled?"

2. In response to the notices issued by the Tribunal both the parties appeared through their respective representatives. Sri P. K. Das, Advocate, appeared for the management and Sri R. Kumar, General Secretary of K. M. C. appeared for the union. Both the parties filed their written statement and contested the dispute.

3. The facts of the case, in brief, are that the workman, namely, Baidnath Nayak, was a permanent employee of M/s. E.C. Ltd. posted at New Kenda Colleriery as U.G. Trammer. He was dismissed from his service on the charge of unauthorised absence from 6-10-98 to 23-10-1998.

4. The case of the union, in brief, is that New Kenda Colliery is dominated by particular party and anti-social element and in past there had been numerous murders within the campus of the colliery. Any employee supporting to any other union/party other than a particular party are victimised and murdered. During last election the workman supported the T.M.C. party and due to which he was brutally assaulted and out of fear and danger of life he left the colliery premises and in such situation he was forced to remain absent. It is further pleaded that the workman applied for his transfer and for this purpose he approached the Cabinet Minister of Government of India who gave a letter to Sri Dilip Rai, the then Coal Minister who directed the C.I.L. for issuing transfer order and accordingly the transfer order was issued vide Ref. No. ECL/CMD/C-B/Trf/AG/outside/779 dated 17/20-7-99 but in the meantime the management dismissed the workman. The enquiry was conducted ex-parte without giving opportunity to the workman. The workman gave information to the management giving details about his problem, but instead of considering the same the management dismissed him from service and actually the management was forced to dismiss the workman from service by a particular party. It has been further pleaded that the punishment of dismissal is harsh and disproportionate and accordingly it has been prayed to direct the management to reinstate the workman in service with back wages.

5. The case of the management, in brief, is that the plea of the workman regarding reason of his absence is false. He became absent from his duty without leave or prior permission of the management and hence his absence was unauthorised and consequently the management issued a charage-sheet. The copy of the charge-sheet was sent to the workman at his home address but he did not reply the same and naturally a domestic enquiry was conducted. Notice of enquiry was also sent to the workman on his home address, but despite the notice the workman did not appear before the Enquiry Officer and hence the enquiry was completed ex-parte. The Enquiry Officer came to the conclusion that the charge against the workman was established and after careful consideration the disciplinary authority dismissed the workman from service. The order of dismissal is legal and justified.

6. Although the union has pleaded in its written statement that the workman was not given opportunity to be heard during enquiry but at the time of hearing on the point of fairness and validity of enquiry proceeding the union did not challenge the same and hence the enquiry proceeding has been held to be fair and valid.

7. First point for consideration is as to whether the charge against the workman has been established and the finding of the Enquiry Officer is correct. It is admitted by the union that the workman was absent from duty from 6-10-1998 to 23-10-1998. It is also admitted by the union that the workman had not obtained leave for that period. In defence of the workman only plea has been taken by the union that due to fear of his life at the hands of criminals of a particular union he became absent. In my opinion, the plea of the workmen giving reason to be absent from duty cannot be accepted because it could not justify his absence from duty without any leave or prior permission of the management. Moreover, it is apparent that the workman did not appear before the Enquiry Officer and hence he could not prove his plea in defence and hence it is proved that the absence of the workman was unauthorised and the finding of the Enquiry Officer in this regard is correct.

8. Next point for consideration is as to whether the punishment of dismissal is justified or the same is harsh and disproportionate to the nature of misconduct. The representative of the union submitted that absence of the workman is less than a month i.e. only for 17 days and in past no misconduct was committed by the workman of any nature and hence the punishment of dismissal is harsh and disproportionate. Learned lawyer for the management also fairly admitted that there is nothing on the record to show that the workman has committed any misconduct in past.

I perused the charge-sheet which does not disclose any previous misconduct committed by the workman. The Enquiry Officer also has not mentioned any such misconduct committed in past, even the order of dismissal dated 17-9-1999 passed by the General Manager, Kendra Area does not disclose any fact of misconduct committed in past and hence only charge against the workman has been established that he presently became absent from his duty for 17 days. In my opinion, for this nature of misconduct the punishment of dismisal is shocking and disproportionate to the nature of misconduct and hence I find and hold that the action of the management in dismissing Baidnath Nayak from service is illegal and unjustified.

9. It has been neither pleaded nor proved by the management that the workman was gainfully employed anywhere during the period after his dismissal and hence in the facts and circumstances of the case the order of dismissal is set aside and the management is directed to reinstate the workman in service with 60% of the back wages. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का.आ 1506.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल (संदर्भ संख्या 43/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2003 को प्राप्त हुआ था।

[सं. एल-22012/207/98-आई आर (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1506.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-4-2003.

[No. L-22012/207/98-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

In the matter of a reference U/S. 10 (1)(d) (2A) of I.D. Act, 1947.

Reference No. 43 of 1999.

PARTIES :Employers in relation to the management of the Agent, Madhavpur Colliery of M/s. E.C. L.

AND

Their Workmen.

PRESENT : Shri Ramjee Pandey, Presiding Officer

APPEARANCES:

For the Employers : Shri P K. Das, Advocate.

For the Union/ Workman : Shri R. Kumar, General Secretary of Koyla Mazdoor Congress.

State : West Bengal. Industrial : Coal

Dated, the 13th March, 2003.

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/207/98/IR (CM-II)) dated 24-4-1999, has referred the following dispute for adjudication by this Tribunal :

> "Whether the action of the management of Madhavpur Colliery of M/s. E.C.L. in not accepting the date of birth of Sh. Mithailal Mourya, workman, recorded in the matriculation certificates per the provision of NCWA-IV is legal and justified ? If not, to what relief is the workman entitled ?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. Sri P. K. Das, Advocate, appeared for the management and Sri R. Kumar, General Secretary of K.M.C. appeared for the union. The union filed written statement, but despite several adjournments no written statement was filed on behalf of the management and consequently the case was fixed for ex-parte hearing.

3. The case of the union, in brief, is that the workman, namely, Mithailal Mourya, was a Pit Clerk in Nav Kajora Colliery and he was a permanent employee of M/s E.C.L. He was appointed on 29-12-1969. It is further stated that the workman has got a certificate of matriculation and he represented before the management to correct his date of birth in the service record as per matriculation certificate. According to guidelines issued by JBCCI when the workman raised age dispute returning the service excerpt the management should have finally decided the dispute but the same was not done. According to matriculation certificate the date of birth of the workman is 5-5-1950, but wrongly the date of birth of the workman has been recorded in the company's record as 1-7-1938. The workman came in

service in the year 1969 whereas he has passed the matriculation examination in 1965 and the management should have accepted the matriculation certificate for recording the date of birth of the workman in the service record and accordingly a prayer has been made that the management of Madhavpur Colliery may be directed to accept the date of birth of the workman as 5-5-1950 as per guidelines of JBCCI.

4. As stated, no written statement of the management was filed and the case has been fixed for ex-parte against the management and hence no counter version has been brought on record. The union has filed affidavit of only one witness, namely, Mithailal Mourya, who has stated that according to matriculation certificate his date of birth is 5-5-1950 and he raised the dispute before the management several times and also in the year 1987 after receiving service excerpt with a request that his date of birth should be corrected as per matriculation certificate. The management directed the workman to appear before the Age Determination Committee and accodingly the workman appeared and produced his matriculation certificate before the Committee, but the Committee did not accept the date of birth as per matriculation certificate rather the members of the Committee simply decided to give benefit of further four years service to the workman according to their wish and ultimately the workman was superannuated on 1-7-2002. He has further stated that he and the union raised objection against the opinion of the Committee but the management did not accept the same and hence this dispute has been raised. In support its case the union has filed the xerox copy of matriculation certificate issued by the Competent Board of State of Uttar Pradesh in which his date of birth has been recorded as 5-5-1950.

5. I perused the evidence of the workman, written statement submitted on his behalf and xerox copy of matriculation certificate. The xerox copy of matriculation certificate indicates that the date of birth of the workman is 5-5-1950. There is nothing on record to disbelieve the date of birth of the workman disclosed in the matriculation certificate. There is nothing on the record to contradict or to disbelieve the plea taken by the union. According to National Coal Wage Agreement-IV, Implementation Instruction No. 37 dated 5-2-1981 has been revised and the same is enclosed as Annexure-I in the case of appointees who have passed matriculation or equivalent examination, the date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances. In my opinion, no sooner the workman raised the dispute about incorrect recording of date of birth on the basis of matriculation certificate it was bounden duty of the management to consider the same, but the management failed to discharge the liability. In my opinion, the management should have accepted the date of birth according to matriculation certificate and hence I find and hold that the action of the management of Madhavpur Colliery of M/S. ECL in not accepting the date of birth of Mithailal Mourya as recorded in matriculation certificate is illegal and not justified. The workman is entitled to continue in service till the date of his superannuation according to matriculation certificate and to get all the benefits in the manner he is continuing in service till that date. In the above manner the award is passed ex-parte against the management.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का.आ 1507.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल (संदर्भ संख्या 25/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/326/98-आई आर (सी-II)]

एन.पी.केशवन, डेस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1507. —In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 25/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/326/98-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

In the matter of a reference U/S. 10 (1)(d) (2A) of I.D. Act, 1947.

Reference No. 25 of 1999

PARTIES :Employers in relation to the management of the Agent, E.C. L.

AND

Their Workmen.

PRESENT: Shri Ramjee Pandey, Presiding Officer

APPEARANCES:

For the Employers : Shri P K. Dass, Advocate.

For the Workman : Shri S. K. Pandey, Chief General Secretary, Koyla Mazdoor Congress.

State : West Bengal. Industrial : Coal

Dated, the 13th March, 2003.

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/326/98/IR (CM-II)) dated 26/27-5-1999, has referred the following dispute for adjudication by this Tribunal:

"Whether the action of the management of Dalurband Colliery, Pandeveswar Area of M/s. E.C.L. by forcefully superannuating Sh. Jibu Mian, CCM Mazdoor on 20-6-1997 from service is legal and justified ? If not, to what relief is the workman entitled ?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. Sri P. K. Das, Advocate, appeared for the management and Sri S. K. Pandey, Chief General Secretary of K.M.C. appeared for the union. Both the parties filed their respective written statements and contested the dispute.

3. The facts of the case, in brief, are that the workman, namely, Jibu Mian, was a permanent employee of M/s. ECL and posted as CCM Mazdoor at Dalurband Colliery under Pandeveswar Area. The workman was superannuated on 20-6-1997 and the union has challenged the action of the management in superannuating him on the ground that he was forcefully superannuated and his superannuation was pre-mature.

4. The case of the workman, in brief, is that the workman was forcefully superannuated earlier before the date of his superannuation as per his date of birth recorded in Form 'B' Register. Although in its written statement the union has not given the actual date of birth but from the documents filed by the union it appears that 1939 is the year of birth of the workman recorded in Form 'B' Register and accordingly it has been stated that the act of the management superannuating the workman earlier is illegal. On pertest in similar cases except the present workman all other workmen were allowed to join even after termination, but the present workman was not allowed on the ground that he had already withdrawn the amount of his provident fund. It is further stated that simply because the workman has withdrawn his provident fund amount he cannot be deprived of his right accrued by the provisions, circulars and laws. It has been further stated that the plea of the management to the effect that after completion of 42 years of service superannuation of workman will be legal, has got no force and that cannot be accepted. On the basis of the above pleading the union has prayed that it should be decided that the act of the management superannuating the workman on 20-6-1997 is illegal and inoperative and the management be directed to allow the workman to resume his duty till he reaches the age of superannuation as per his year of birth recorded in Form 'B' Register.

5. The case of the management, in brief, is that unless a person completes his age of 18 years he is not competent to make any contract including the contract of service in any institution and naturally when the workman came in service he had completed the age of 18 years and in the middle of June, 1997 the workman completed 42 years of service and naturally he has completed the age of 60 years which is the date of superannuation. It is further stated that the workman has accepted his superannuation and has withdrawn his provident fund amount as well as gratuity and hence superannuation of the workman is legal and justified and he is not entitled to any relief.

6. Although both the parties were given opportunity to adduce evidence, but the management did not adduce oral evidence. The affidavit of only one witness, namely, workman Jibu Mian was filed by the union, but the learned lawyer for the management declined to cross-examine him. Out of documentary evidence the management has filed the copy of Form 'B' Register and certain papers issued by CMP F showing the fact that the workman has withdrawn the amount of provident fund. The union has also filed the service excerpt and a copy of Identity Card issued by the company in 1986. The service excerpt was issued on 1-6-1987.

7. It is admitted by both the parties that year of birth of the workman has been recorded as 1939 in Form 'B' Register and if the same is accepted the actual year of superannuation of the workman will be 1999. Learned lawyer for the management has submitted the fact of superannuation of the workman on the ground that he completed 42 years of his service and by inference he submitted that he completed the age of 60 years in 1997 because no person can be appointed before completing the age of 18 years.

8. As per Article I (IV)(b) of Schedule I-B of Industrial Employment (Standing Orders) Act, 1946 the date of birth of the workman once entered in the service card of the establishment shall be sole evidence of the age in relation to all matters pertaining to his service including fixation of date of his retirement from service of the establishment and according to this provision the actual date of retirement of the workman is the year 1999. It is relevant to mention here that the coal mines were taken over by the Central Government in the year 1971 and before that all the mines were in the hands of private persons and hence I find no force in the contention of the management that the workman came in servlce after completing his 18 years of age. Since the workman was in service prior to nationalisation of the coal mines there is possibility that he entered in the service in early age and that is why he completed 42 years of service before the date of his completion of 60 years of age and that cannot be a ground to superannuate the workman on early date. It is a fact that after forceful superannuation the workman has received the amount of provident fund from C.M.P.F. but it cannot be a ground to permit the management to justify the arbitrary act of the management superannuating the workman on a pre-matured date. Hence, in my opinion, the action of the management by forcefully superannuating Jibu Mian from service is illegal and unjustified. The workman is entitled to continue in service till the year 1999, the actual date of his superannuation, but since that period has expired the workman is entitled to get all financial benefits as if he continued in service till the year 1999 and accordingly the management is directed to give all financial benefits to the workman. In the above manner the award is passed

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का. आ. 1508. —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल (संदर्भ संख्या 86/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/431/98-आई. आर.(सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1508. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 86/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/431/98-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

In the matter of a reference U/s. 10(1)(d)(2A) of I.D. Act, 1947.

Reference No. 86 of 1999

Parties : Employers in relation to the management of Amritnagar Colliery of M/s. ECL

AND

Their Workmen

Present : Shri Ramjee Pandey, Presiding Officer

Appearances :

For the Employers : Shri P. Goswami, Advocate

For the Union/ Workman : Shri H. L. Sone, Secretary, Koyla Mazdoor Congress

State : West Bengal

Industry : Coal

Dated, the 4th April, 2003

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/431/98/IR(CM-II) dated 7-7-99, has referred the following dispute for adjudication by this Tribunal :

> "Whether the action of the management of ECL, Amritnagar Colliery in dismissing the services of Sh. Mahendra Das is justified ? If not, to what relief is the workman entitled ?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. Sri P. Goswami, Advocate, appeared for the management and Sri H. L. Sone, Secretary of K.M.C. appeared for the union. Both the parties filed their respective written statements and contested the dispute.

3. The facts of the case, in brief are that the workman, namely, Mahendra Das, was a permanent employee of M/s. ECL and was posted as Timber Mazdoor at Amritnagar colliery. He was dismissed from his service on the alleged charge of unauthorised absence from his duty from 12-2-96 to 27-3-96. The Union has challenged the order of dismissal.

4. The case of the Union, in brief, is that the workman fell ill due to which he could not attend his duty from 12-2-96 to 27-3-96 and no sooner the workman took recovery from his illness he reported for duty on 28-3-96 with medical certificate. But the management did not take cognizance of the medical certificate produced by the workman and issued charge-sheet. No notice of enquiry was sent to the workman and the management knowing this fact that the workman was present at the colliery sent the notice of enquiry at his home address and hence the enquiry proceeding was concluded in dark. It is further stated that due to absence of notice the workman could neither attend the enquiry nor produced any evidence to defend himself and consequently the enquiry was held ex-parte. The enquiry was not done properly and hence the enquiry proceeding was not fair and the dismissal of the workman on the basis of that enquiry report is illegal and unjustified. It has been further stated that before passing the order of dismissal no show-cause notice was sent to the workman and it has been further stated that the order of dismissal is harsh and disproportionate to the nature of alleged misconduct. A prayer has been made that the management may be directed to reinstate the workman in service with back wages.

5. The case of the management, in brief, is that the workman became absent from his duty without any leave or information to the management and hence his absence was unauthorised. He was in habit of being absent from duty without leave or prior permission as a result of which he was punished several times for similar misconduct and he was cautioned to amend himself. Considering the misconduct committed by the workman a charge-sheet was issued but he could not submit the reply and hence a

departmental enquiry was started. The Enquiry Officer sent notice of enquiry on home address of the workman, but inspite of the notice the workman did not appear before the Enquiry Officer and hence the Enquiry Officer concluded the enquiry ex-parte and submitted his report. After perusing the enquiry report and considering past performance the management dismissed the workman from service. It is further stated that the order of dismissal is legal and justified and the workman is not entitled to any relief.

6. Although the union has pleaded in the written statement that the workman was not given opportunity to defend himself and the enquiry proceeding was concluded ex-parte without proper notice to the workman, but at the time of hearing on the point of validity of the enquiry proceeding Sri H.L. Soni, Secretary of the union did not challenge the same rather admitted that he had knowledge of the enquiry and hence by order dated 9-10-2002 the enquiry proceeding has been held to be valid.

7. First point for consideration is as to whether the charge against the workman has been established and the finding of the Enquiry Officer is correct. It is admitted by both the parties that the workman remained absent from his duty from 12-2-96 to 27-3-96. It is also admitted by the union that the workman had not obtained leave for that period. In defence of the workman only plea has been taken by the union is that due to sickness and undergoing treatment he could not attend the duty. From perusal of the enquiry report it is clear that the workman could not adduce evidence before the Enquiry Officer to prove the fact of his sickness. On the other hand, the management produced witnesses to support the fact that the workman remained absent from duty from 12-2-96 to 27-3-96 without any information and permission. The witness of the management, namely, Rajendra Prasad Yadav has further stated that the workman is habitual absentee. He produced certain documents before the Enquiry Officer showing the workman to be absent from duty. In view of the matter I find that the workman could not adduce and prove the fact that he was sick and hence it has been established that absence of the workman was unauthorised and the report of the Enquiry Officer in this regard is correct.

8. Next point for consideration is as to whether the punishment of dismissal of the workman from service is justified or the same is harsh and disproportionate to the nature of misconduct. Learned lawyer for the management submitted in this regard that in past also the workman was in habit to be absent from his duty without leave for which on several occasions he was awarded punishment of caution on similar act of misconduct and hence he is a habitual absentee and hence the punishment of dismissal from service is justified. On the other hand, the representative of the union submitted that although the management has taken a plea that the workman is habitual absentee and in past also he has committed such misconduct for which he was punished by way of caution but the plea of the management in this regard is vague and no period of absence of the workman in past has been given nor any particular order of giving caution to the workman has been mentioned by the management in its written statement and hence the union was not in a position to deny the same and meet the same. He further submitted that the charge-sheet also does not indicate that the workman was punished by warning in past. He further submitted that during enquiry proceeding Rajendra Prasad Yadav, the witness of the management has stated that in past also the workman was absent for which he was giving the warning by the management several times and the Enquiry Officer also has discussed this witness, but during enquiry also nothing was brought to show the period of absence and the order by which the workman was punished by way of giving warning and hence the plea of the management about previous punishment cannot be used against the workman at the time of deciding the quantum of punishment. On the basis of above submission the representative of the union submitted that the punishment of dismissal from service for a short period of one and half month is harsh and disproportionate to the nature of misconduct.

9. In view of the contrary submissions made by both the parties I perused the written statement, the charge-sheet, enquiry report and evidence during enquiry. No doubt the workman has been charge-sheeted for past absence also. Although in the written statement the management has pleaded that the workman has committed similar misconduct in past and has been awarded punishment of warning but specific period or date of either unauthorised absence in past or the order of punishment of caution has not been given in the written statement. During enquiry also no evidence was produced to show as to by which particular order the workman was awarded punishment of caution. From perusal of the record it appears that by order dated 24-7-96 issued by the General Manager the workman was dismissed from service after considering the enquiry report but this order also does not indicate that any punishment in past has been considered by the competent authority. Moreover, there is nothing on the record to show that before passing the order of dismissal the workman was given show-cause notice indicating intention of the competent authority to consider his past record of punishment of caution and hence in my opinion also any punishment of caution in past, if any, not brought on record specifically, cannot be used against the workman at the time of deciding the quantum of punishment. Moreover, if the workman was given a caution earlier for similar misconduct he could have been awarded a lesser punishment and not the maximum punishment of dismissal from service and hence, in my opinion also, the punishment of dismissal from service is harsh and disproportionate to

the nature of misconduct. Accordingly, the order of dismissal is set aside and the management is directed to reinstate the workman in service, but in the facts and circumstances of the case without back wages. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का. आ. 1509. —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल (संदर्भ संख्या 84/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/347/98-आई. आर. (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1509. —In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/347/98-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

In the matter of a reference U/S. 10(1)(d)(2A) of I.D. Act, 1947.

Reference No. 84 of 1999.

Parties	:	Employers in relation to the management of E.C.L.
		AND
		Their Workmen
Present	:	Shri Ramjee Pandey, Presiding Officer
APPEARANCES:		
For the Employers	:	Shri P. K. Das, Advocate
For the Union/ Workman	:	Shri S.K. Pandey, Chief General Secretary, Koyla Mazdoor Congress.
State	:	West Bengal
Industry	:	Coal

Dated, the 7th March, 2003.

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/347/98/IR (CM-II) dated 7-7-99, has referred the following dispute for adjudication by this Tribunal :

> "Whether the action of the management of North Searsole Colliery under Kunustoria Area of M/s. ECL by forcefully superannuating Sh. Muleshwar Singh, Mining Sirdar w.e.f. 01-07-1994 is legal and justified? If not, to what relief is the workman entitled?

2. Both the parties appeared through their respective representatives after receiving summons issued by the Tribunal. Sri P.K. Das, Advocate, appeared for the management and Sri S.K. Pandey, Chief General Secretary of K.M.C. appeared for the union. Both the parties filed their respective written statements and contested the dispute.

3. The facts of the case, in brief, are that the workman namely, Muleshwar Singh, was a permanent employee of M/s. ECL posted at North Searsole Colliery as Mining Sirdar. The management superannuated the workman on 1-7-1994 and the union has challenged the act of the management of superannuating the workman on the ground that the management forcefully superannuated the workman before the actual date of superannuation.

4. The case of the union, in brief, is that the year of birth of the workman is 1940 which has been recorded in Form'B' register. In the Identity Card also issued by Kunustoria Area of the company the date of birth of the workman is 1940. In the record of C.M.P.F. the date of appointment of the workman has been recorded as 7-4-1956. The management supplied the service excerpt to the workman on 5-3-1987 and in that service excerpt also the year of birth of the workman was recorded as 1940 and hence there was no occasion for the workman to raise any dispute regarding his date of birth. According to the provision of the company the workman should have been superannuated on 1-7-2000, but surprisingly enough he was forced to be superannuated with effect from 1-4-1994. Subsequently the Director (Personnel) of the company issued a circular regarding age dispute of the workman and verified that the management would place reliance on the age of the workman recorded in Form 'B' Register. It is further stated that Form 'B' Register of the company is a statutory register and the date of birth recorded therein is authentic and binding and hence the act of the management superannuating the workman on 1-7-1994 is pre-matured and illegal and accordingly a prayer has been made to direct the management to allow the workman to

continue in service till the actual date of his superannuation with financial benefit from 1-7-1994 to the date of rejoining the workmen in service.

5. The case of the management, in brief, is that although the date of birth of the workman is recorded as 1940 but the date of birth of the workman in his Mining Sirdar Certificate has been recorded as 1-7-1934. The Mining Sirdar Certificate is a statutory certificate issued by the competent Board and the date of birth recorded therein should be treated as conclusive and hence the act of the management superannuating the workman on 1-7-1994 on the basis of his date of birth recorded in Mining Sirdar Certificate is legal and justified and accordingly it has been stated that the workman is not entitled to any relief.

6. Although both the parties were given opportunity to adduce evidence, but neither of the parties adduced oral evidence rather both the parties filed their documents and placed reliance upon them. The union has produced xerox copy of Identity Card issued by Kunustoria Area of M/s. ECL and Service Excerpt from service record issued by the company whereas the management has produced the xerox copy of Form 'B' Register and Mining Sirdar Certificate. None of the parties disputed the genuineness of any document filed on their behalf respectively.

7. Learned lawyer for the management submitted that although the year of birth of the workman has been recorded as 1940 but the Mining Sirdar Certificate issued by a competent Board under the Mines Act is statutory certificate and the date of birth mentioned therein should be taken to be conclusive proof of date of birth of the workman. On the other hand, the representative of the workman submitted that Sirdar's Certificate issued under the Mines Act is undoubtedly a statutory certificate but the date of birth of the workman mentioned therein cannot be taken to be conclusive if the same is disputed specifically in view of the fact that the date of birth of the workman has been differently recorded in his service record. He pointed out Article I(iv)(b) of Schedule IA of the Industrial Employment (Standing Orders) Act, 1946 and submitted that the date of birth once entered in the service record of the establishment shall be the sale evidence of his age in relation to all matters pertaining to his service including fixation of date of his retirement and all the formalities regarding recording of the date of birth shall be finalised within three months of the appointment of the workman. In view of contrary submissions made by the parties I perused the documents filed on their behalf. The Identity Card issued by the management indicates that the year of birth of the workman is 1940. In the service excerpt issued by the management to the workman in the year 1987 also indicates that 1940 is the year of birth of the workman has been recorded in the same. The service excerpts are issued on the basis of Form 'B' register. The management has also filed the relevant portion of Form 'B' register in which also the year of birth has been recorded as 1940. None of the documents has been disputed by the management. As per Art.I(IV)(b) of Schedule I-B of the Industrial Employment (Standing Orders) Act, 1946 the date of birth of a workman once entered in the service card of the establishment shall be the sole evidence of the age in relation to all matters pertaining to his service including fixation of date of his retirement. According to this provision of all formalities regarding recording date of birth shall be finalised within three months of the date of appointment of a workman. It is admitted position that uptil now 1940 is the year of birth of the workman recorded in Form 'B' register. From the copy of Sirdar's Certificate it is clear that the same was issued in the year 1978 and if the management was placing reliance upon the date of birth recorded in Sirdar's Certificate it could have invited objection of the workman on the earlier date and could have decided the matter finally but the same was not done. In this view of the matter I am of the definite opinion that the Sirdar's Certificate cannot be the basis of ascertaining the date of birth of the workman. In this view of the matter I find and hold that the action of the management of North Searsole Colliery under Kunustoria Area of M/s. ECL by forcefully superannuating the workman on 1-7-1994 is illegal and unjustified. The actual year of superannuaton of the workman should be calculated according to his date of birth recorded in Form 'B' Register which is 1940. According to the calculation the workman should have continued in service till the year 2000, but since that period has expired the management is liable to give all financial benefits to the workmen as if he was in service till the year 2000 and accordingly the management is directed. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का. आ. 1510. —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल (संदर्भ संख्या 134/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-4-2003 को प्राप्त हुआ था।

[सं. एल-22012/207/99-आई. आर.(सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1510. —In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 134/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of ECL and their workman, which was received by the Central Government on 29-4-2003.

[No. L-22012/207/99-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

In the matter of a reference U/S. 10(1)(d)(2A) of I.D. Act, 1947

Reference No. 134 of 1999.

PARTIES : Employers in relation to the management of the Agent ECL

AND

Their Workmen

PRESENT : Shri Ramjee Pandey, Presiding Officer

Appearances :

For the Employers : Shri P. K. Das, Advocate

For the Union/ Workman : Shri S.K. Pandey, Chief General Secretary, K.M.C.

State : West Bengal

Industry : Coal

Dated, the 7th March, 2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/207/99/IR (CM-II) dated 31-8-1999, has referred the following dispute for adjudication by this Tribunal :

> "Whether the action of the management of Madhusudanpur Colliery of M/s. ECL, in dismissing Sh. Pratnam Kora, workman from service is legal and justified ? If not, to what relief the workman is entitled ?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. Sri P. K. Das, Advocate, appeared for the management and Sri S.K. Pandey, Chief General Secretary of K.M.C. appeared for the union. Both the parties filed their respective written statements and contested the dispute.

3. The facts of the case, in brief, are that the workman, namely, Pratnam Kora, was an employee of M/s. ECL posted as Drill Operator at Madhusudanpur Colliery under Kajora area. He was dismissed from his service on the charge of unauthorised absence from 14-7-1997 to 11-9-1997 and the union has challenged the order of dismissal.

4. The case of the Union in brief, is that the workman did not absent himself from duty rather he was forced by the management to sit idle and later on he became sick and was undergoing medical treatment due to which he could not resume for the alleged period. It is further stated that at the time of dismissal the workman was working as Drill Operator (Excavation) at Sangramgarh OCP and subsequently after being exonerated from the change levelled against him he was reinstated and was allowed to resume his duty at Kajora Area. He reported for his duty at Madhusudanpur Colliery as per order of Dy. CPM of Kajora area and no sooner he joined his duty he found that Madhusudanpur Colliery was underground mine and there was no job for Drill Operator but still the workman was forced to work as Underground Driller. The workman made protest before the management and expressed his inability to work as Driller on the ground that he had been working as Drill Operator on surface, but despite his representation the local management did not agree with the request of the workman. Although the matter was discussed at Headquarter of M/s. ECL but instead of posting Sri Kora in his original job he was served with a charge-sheet and subsequently he was dismissed from his service. It is stated that the dismissal of the workman is illegal and unjustified and accordingly a prayer has been made to direct the management to reinstate the workman in service with full back wages.

5. The case of the management, in brief, is that the workman became absent from his duty from 14-7-1997 to 11-9-1997 without any leave or prior permission of the management and as such the absence of the workman was unauthorised. Since the workman committed misconduct he was served with a charge-sheet to which the workman submitted his reply denying the charges, but explanation offered by the workman was found unsatisfactory and a domestic enquiry was held. The Enquiry Officer issued the notice of enquiry and gave proper opportunity to the workman to defend himself and the workman participated during enquiry. The workman was habitual absentee. During enquiry the Enquiry Officer arrived at a finding that the charge against the workman was proved and considering the fact that the charge was proved the competent authority dismissed the workman from service. It has been admitted by the management that earlier the workman was exonorated from the charge levelled against him and he was asked to resume his duty with a view that he would reform himself, but it has been denied that the workman was forced to work as Underground Driller. It is also denied that the workman expressed his inability to work as Underground Driller. It is further stated that considering the gravity of the misconduct the management dismissed the workman

and hence the order of dismissal is legal and justified and it does not require interference by the Tribunal.

6. At the time of hearing on the point of fairness and validity of the enquiry proceeding the union did not challenge the same and hence by order dated 20-6-2002 the enquiry proceeding has been held to be valid.

7. First point for consideration is as to whether the charge against the workman has been established and the finding of the Enquiry Officer is correct. It is admitted by the union that the workman was absent from his duty from 14-7-1997 to 11-9-1997. It is also admitted that the workman had not obtained leave or prior permission of the management for his absence. In defence of the workman the union has pleaded that firstly the workman was forced by the management to sit idle and later on he became sick and was undergoing medical treatment due to which he became absent. During enquiry the workman gave statements before the Enquiry Officer in which he has stated that due to sickness he was undergoing medical treatment and he could not resume duty, but he could not produce any medical certificate and hence the Enquiry Officer has rightly held that the fact of illness could not be proved. Nowhere in his statement the workman has stated that he was forced to sit idle and hence the workman could not prove the fact that he was ill and he was compelled by the management to sit idle and hence the absence of the workman has been established to be unauthorised and the finding of the Enquiry Officer is correct.

8. Next point for consideration is as to whether the punishment of dismissal of the workman from service is justified or not. In this regard learned lawyer for the management submitted that the charge of misconduct of the workman is grave and hence the punishment of dismissal from service is justified. On the other hand, the representative of the union submitted that the workman was not charge-sheeted for habitual absenteeism and hence considering the nature of misconduct the punishment of dismissal is harsh and disproportionate to the nature of misconduct. In this regard I perused the finding of the Enquiry Officer and I find that in para 5 of his finding the Enquiry Officer has stated that after perusal of service record produced before him from Sangramgarh Colliery under Salanpur area it reveals that the workman was once dismissed from the service by order dated 11/12-10-1995 for the same type of misconduct, but subsequently the order was reviewed and he was posted as badli worker. Neither this fact has been pleaded by the management in its written statement nor there is any material on the record to show that at the time of passing the order of dismissal on 11/12-10-1995 the principle of natural justified was followed and the workman was given opportunity to defend himself. This fact has not been incorporated in the present charge-sheet. Before passing the order of dismissal the competent authority did not issue a show-cause notice disclosing his intention to cansider the past record at the time of awarding punishment and the workman has remained unheard on that material and hence that past record cannot be used against the workman to consider the quantum of punishment. The only misconduct has been properly established against the workman is that he was absent from his duty from 14-7-1997 to 11-9-1997 and his absence was unauthorised. The total absence of the workman is less than two months. The learned lawyer for the management fairly admitted that there is neither charge nor evidence to prove the fact that the workman is habitual absentee. Considering the above discussions as well as facts and circumstances, in my opinion, the punishment of dismissal from service is disproportionate and hence the order of dismissal is set aside and the management is directed to reinstate the workman in service, but in the facts and circumstances of the case with 50% of back wages. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का. आ. 1511.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल (संदर्भ संख्या 43/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/289/99-आई. आर.(सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1511.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/289/99-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

In the matter of a reference U/s. 10(1)(d)(2A) of I.D. Act, 1947.

Reference No. 43 of 2000.

PARTIES : Employers in relation to the management of Dalurband Colliery of M/s E.C.L.

AND

Their Workmen

PRESENT : Shri Ramjee Pandey, Presiding Officer

APPEARANCES:

For the Employers	:	Shri P. K. Das, Advocate
For the Union/ Workman	:	Shri R. Kumar, General Secretary, Koyla Mazdoor Congress.
State	:	West Bengal
Industry	:	Coal

Dated, the 4th April, 2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/289/99/IR (C-II) dated 1-6-2000, has referred the following dispute for adjudication by this Tribunal :

> "Whether the action of the management of Dalurband Colliery of M/s. ECL in dismissing Sh. Kalu Das is justified? If not, to what relief the workman is entitled?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. Shri P.K. Das, Advocate, appeared for the management and Sri R. Kumar, General Secretary of K.M.C. appeared for the union. Both the parties filed their respective written statements and contested the dispute.

3. The facts of the case, in brief, are that the workman namely, Sri Kalu Das, was a permanent employee of M/s. ECL posted as time-rated mazdoor at Dalurband Colliery, under Pandweshwar Area. Earlier he was posted as Q/Miner at Lakhimata colliery under Mugma Area wherefrom he was transferred to Pandweshwar area. When he was posted at Pandweshwar Area he was dismissed from his service on the charge of unauthorised absence from duty from 23-12-93 to 21-6-94 and the union has challenged the order of dismissal.

4. The case of the union, in brief, is that the workman suddenly fell ill due to which he could not attend his duty during, alleged period. When the workman was posted at Lakhimata colliery he was working as Q/Miner in open cast mine but after transfer at Dalurband colliery he was sent to work underground causing uneasiness and due to this reason he fell ill. Inspite of the fact that the workman was ill the management issued charge-sheet to the workman and after conducting domestic enquiry dismissed the workman from service. The order of dismissal is not legal and justified. The total period of absence of the workman was less than six months. Although with regard to other workers who were absent from their duties even for more than a year were allowed to join their duty but the present workman was punished by way of dismissal from service. It is further submitted that the punishment of dismissal is harsh and disproportionate and accordingly a prayer has been made to direct the management to reinstate the workman in service with back wages.

5. The case of management, in brief, is that the workman become absent from duty from 23-12-93 to 31-7-99 without any prior permission or authorised leave and as such his absence was unauthorised. The workman was charge-sheeted for the alleged misconduct and thereafter a domestic enquiry was started. The workman fully participated in the enquiry proceeding and he was given reasonable opportunity to defend his case. The Enquiry Officer concluded the enquiry and submitted his report with a finding that the charge against the workman was established. After considering the enquiry report carefully the management was satisfied that it was a fit case for dismissal from service and accordingly the workman was dismissed. It is further stated that it is totally false to say that the workman fell sick and it is also false to say that due to his sickness he remained absent from his duty. It is alleged that the workman never informed the management about the fact of his sickness. Considering the misconduct of the workman the punishment of dismissal is legal and justified and the workman is not entitled to any relief.

6. In its written statement the union has not challenged the validity of the enquiry proceeding in clear words. At the time of hearing also on the point of fairness and validity of the enquiry proceeding the union did not challenge the same and hence the enquiry proceeding has been held to be fair and proper.

7. First point for consideration is as to whether the charge against the workman has been established and the finding of the Enquiry Officer is correct. It is admitted by the union that the workman was absent from duty from 23-12-93 to 21-6-94 without any leave or prior permission of the management. In defence of the workman the union has pleaded that the workman fell ill due to which he did not attend the duty. The representative of the union submitted that during enquiry proceeding also the workman gave evidence and stated that he was ill and was getting treatment by Dr. M.K. Sinha of R.M.A., Kankee, Ranchi, due to which he was not able to attend the duty and be become absent. In support of his illness he produced a medical certificate as well as a prescription issued by Dr. M. K. Sinha. He further submitted that in the enquiry report the Enquiry Officer has also admitted the fact that the workman took a plea that he was sick and getting treatment and in support of his illness he produced the medical certificate as well as prescription. He further submitted that the enquiry report itself indicates that the workman was examined by Dr. M.K. Sinha who diagnosed that the workman was suffering from medical depression. Dr. S. N. Roy of the colliery also examined the workman and supported the diagnosis of Dr. M.K. Sinha and he further gave the opinion that at present the workman was fit and

work. On the basis of the above representative of the union submitted that there was misconduct on the part of the workman and the charge against the workman has not been proved. On the other hand, learned lawyer for the management although admitted this fact that the workman adduced evidence before the Enquiry Officer that he was ill and was suffering from mental depression and his fact has been corroborated by the Doctor of the colliery also, but during whole period of absence the workman did not inform the management about his sickness and hence his absence was unauthorised. In view of contrary submissions I perused the enquiry report and the materials produced during the same. It is clear that the workman produced medical certificate and prescription in support of his illness. The Enquiry Officer also has admitted this fact. From enquiry report it is clear that at the office of the Agent of the colliery the workman was examined by the doctor of the colliery who found that the workman was suffering from mental depression and hence I find and hold that the workman was prevented from attending his duty due to sickness which was beyond his control and he has properly explained reasonable cause of his absence. Hence no misconduct on the part of the workman has been established and the finding of the Enquiry Officer in this regard is not correct.

8. Next point for consideration is as to whether the punishment of dismissal from service is legal, justified or harsh and disproportionate. It has been already held that the workman was absent from his duty due to sickness and hence there is no misconduct on the part of the workman in becoming absent from duty. Only fault on the part of the workman is that he could not inform the management about the fact of his illness and in this regard he has stated that all his family members are illiterate due to which they could not inform the management about the fact of his sickness. In this view of the matter, in my opinion, there was no occasion before the management to award punishment to the workman and dismiss him from service. Hence I find and hold that the order of dismissal is illegal and unjustified and the same is set aside. The management is directed to reinstate the workman in service. It has been neither pleaded nor proved by the management that the workman was gainfully employed anywhere during the period from the order of dismissal, but considering the fact that the workman committed fault in informing the management about the fact of sickness during the whole period of absence and also considering the fact that the management has been deprived of the services of the workman during the period after his dismissal from service the workman will get 50% of the back wages. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का. आ. 1512.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल (संदर्भ संख्या 70/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/544/99-आई. आर.(सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1512.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 70/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/544/99-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

In the matter of a reference U/s. 10(1)(d)(2A) of I.D. Act, 1947.

Reference No. 70 of 2000.

Parties	:	Employers in relation to the management of the Agent Belbad Colliery of M/s. ECL
		AND
		Their Workmen
Present	:	Shri Ramjee Pandey, Presiding Officer
Appearances :		
For the Employers	:	Shri P. K. Das, Advocate
For the Union/Workman	:	Shri R. Kumar, General Secretary, Koyla Mazdoor Congress.
State	:	West Bengal
Industry	:	Coal

Dated, the 27th March, 2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the

Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/554/99/IR (CM-II) dated 28-7/-1-8-2000, has referred the following dispute for adjudication by this Tribunal :

"Whether the action of the management of Belbad Colliery under ECL, in dismissing the services/ denying reinstatement in service of Sh. Dinesh Bouri, Underground Loader is legal and justified? If not, to what relief the workman is entitled?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. Sri P. K. Das, Advocate, appeared for the management and Sri R. Kumar, General Secretary of K. M. C. appeared for the union. Both the parties filed their respective written statements and contested the dispute.

3. The facts of the case, in brief, are that the workman, namely, Dinesh Bouri, was a permanent employee of M/s. E.C.L. appointed on 17-4-1995 and he was posted as Underground Loader at Belbad Colliery. He was dismissed from his service on the charge of unauthorised absence from 20-3-1998 to 22-4-1998. The union has challenged the order of dismissal.

4. The case of the union, in brief, is that the workman was sick due to which he became absent from his duty. Although he informed the management by his co-worker as he was confined to bed, but the management issued the charge-sheet against the workman. The workman was not given notice of domestic enquiry and the enquiry was conducted ex-parte without giving opportunity to the workman to defend himself. No second show-cause notice was given to the workman before passing the order of dismissal and hence the dismissal is illegal and unjustified. It is further stated that the punishment of dismissal is very harsh and extreme and accordingly a prayer has been made to direct the management to reinstate the workman in service with back wages.

5. The case of management, in brief, is that the workman became absent without leave and information to the management and hence the absence of the workman was unauthorised. In past also the workman was absent from his duty from 16-10-1996 to 30-10-1996 and from 12-11-1996 to 24-11-1996 and despite the fact that the workman was given opportunity to reform himself again he became absent from his duty. Thereafter also the workman became absent from 1-3-1997 to 14-4-1997 for which he was charge-sheeted and after conducting enquiry he was awarded lesser punishment by way of stoppage of his three S.P. R. A(s) and he was allowed to join duty on 22-5-1997. Again the workman became absent from duty from 25-9-1997 for which also he was charge-sheeted and despite his above-mentioned past record the workman again became absent from duty from 20-3-1998 to 22-4-1998 for which he was charge-sheeted which was sent at his address recorded in the company's record. But the workman did not submit explanation and hence domestic enquiry was started. The notices of enquiry were sent twice by post, under certificate of posting but inspite of notices the workman did not appear in the enquiry and hence the enquiry was conducted ex-parte. After considering the fact that the charge against the workman was established he was dismissed from service after considering his past record. It is further stated that the workman was given sufficient opportunity but he opted not to appear and defend himself. Since the workman is a habitual absentee the punishment of dismissal is justified and it does not require interference by the Tribunal.

6. Although in its written statement the union has pleaded that the workman was not given the notice of enquiry and the enquiry was conducted ex-parte without giving him opportunity to defend but at the time of hearing on the point of fairness and validity of the enquiry proceeding the union did not challenge the same and hence by order dated 19-2-2003 the enquiry proceeding has been held to be valid.

7. First point for consideration is as to whether the charge against the workman has been established and the finding of the Enquiry Officer is correct. It is admitted by the union that the workman was absent from duty from 20-3-1998 to 22-4-1998. It is also admitted that the workman had not obtained leave for that period. In defence of the workman only plea has been taken that due to sickness he was compelled to be absent from duty during that period. It is admitted that the workman did not appear before the Enquiry Officer to defend himself and he could not produce any evidence in support of his sickness. From the enquiry report also it is clear that the Enquiry Officer has made an attempt to find out any paper regarding any leave application of the workman, but there was no leave application and hence it is established that the absence of the workman was unauthorised and the finding of the Enquiry Officer is correct to the effect that the charge against the workman has been established.

8. Next point for consideration is as to whether the punishment of dismissal from service is legal and justified or the same is harsh and disproportionate. In this regard the representative of the union submitted that the period of absence of the workman is very short and in past he did not commit any misconduct and hence the punishment of dismissal is harsh. Learned lawyer for the management also conceded that there was no misconduct on the part of the workman in parts, but from the persual of the written statement of the management and the enquiry report I find that the representative of the workman as well as learned lawyer for the management have wrongly place the fact before me that the workman did not commit any misconduct in past. It is admitted fact that the workman was initially appointed on 17-4-1995 which has been admitted by the union in para 2 of its written statement. From paras 3, 4, 5 and 6 of the written statement of the management it is clear

that the management has specifically pleaded the fact that the workman became absent from 12-11-96 to 24-11-96 for which he was issued a letter of caution by the management. Again the workman became absent from 1-3-97 to 14-4-97 for which he was charge-sheeted and after conducting enquiry in which he took participation his misconduct was established and he was awarded punishment of stoppage of three S. P. R. As. Again the workman became absent from 25-9-97 but the management allowed him to join duty. It has been further started that in the year 1997 the total attendance of the workman was 145 days for which he was given a letter of warning. The pleading of the management given in paras 3 to 6 has not been denied by the union in any para of its written statement and hence the statement of facts in paras 3, 4, 5 and 6 of the written statement of the management will be taken to be admitted. In the enquiry report also the Enquiry Officer has given a finding that the workman was punished by stoppage of three S.P. R. As in the year 1997. In view of above discussed facts it is clear that just after a year of his appointment the workman developed a habit to become absent from his duty without leave and prior information to the management and hence he is a habitual absentee. Considering the past record of the workman I am also of the opinion that the punishment of dismissal cannot be disproportionate and hence I find and hold that the action of the management of Belbad Colliery in dismissing the services/denying reinstatement in service of Dinesh Bouri is legal and justified and he is not entitled to any relief. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का. आ. 1513.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल (संदर्भ संख्या 65/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/492/99-आई. आर.(सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1513.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/492/99-IR (C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

In the matter of a reference U/s. 10(1)(d)(2A) of I.D. Act, 1947.

Reference No. 65 of 2000.

Parties : Employers in relation to the management of the Agent, Bidhanbag, ECL

AND

Their Workmen

Present : Shri Ramjee Pandey, Presiding Officer

Appearances :

For the Employers : Shri P. Goswami, Advocate

For the Union/Workman : Shri R. Kumar, General Secretary, Koyla Mazdoor Congress.

State : West Bengal

Industry : Coal

Dated, the 27th March, 2003

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/492/99/IR (CM-II) dated 27-07-2000, has referred the following dispute for adjudication by this Tribunal :

"Whether the action of the management of Nimcha Colliery under ECL, in denying the date of birth of Sh. Janta Singh, Timber Mistry as 26 years as on February, 1973 is legal and justified? If not, to what relief the workman is entitled?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. Sri P. Goswami, Advocate, appeared for the management and Sri, R. Kumar, General Secretary of K. M. C. Appeared for the union. Both the parties filed

their respective written statements and contested the dispute.

3. The facts of the case, in brief, are that the workman, namely, Janta Singh, is an employee of M/s. E.C.L. posted at Timber Mistry at Nimcha colliery. The workman was appointed in service in the year 1973 and at the time of appointment his age was assessed and recorded by the management as 26 years on 4-8-1969. The Union has challenged the fact of age of the workman recorded as 26 years in the year 1969 instead of the year 1973.

4. The case of the union, in brief, is that the workman was initially appointed on February, 1973 but his date of appointment has been wrongly recorded in the service record as 4-8-1969 and accordingly his age also has been recorded as 26 years as on 4-8-1969. It has been further stated that correct age of the workman is 26 years as on February, 1973 but due to the mistake committed by the management it has been wrongly recorded. It is further stated that when the workman received the format of service excerpt in the year 1987 he found that the date of appointment and the age of the workman had been wrongly recorded and as such he raised a dispute for correction of his date of appointment as well as date of birth while returning the service excerpt and although the management agreed that the date of appointment of the workman was wrongly recorded and corrected accordingly his date of appointment as February, 1973 but the age of the workman was not corrected by the management. It has been further stated that since the workman was initially appointed in the year 1973 the question of assessment of his age in the year 1969 does not arise and hence 26 years age of the workman as on February, 1973 is correct and the same should be accepted and accordingly the management may be directed to correct the same on the service record.

5. In its written statement the management has admitted that after receiving the service excerpt the workman raised dispute with regard to his date of appointment as well as his date of birth and the competent authority found that the case of correction of date of appointment was made out and accordingly it corrected the date of appointment of the workman as February, 1973, but the date of birth remained uncorrected. It is further pleaded by the management that the workman could not produce any document in support of his claim of date of birth and he has raised the dispute at a belated stage and hence it cannot be entertained. It is further stated that the dispute is barred by Article 58 of Limitation Act and accordingly it has been prayed that the action of the management may be held to be legal and justified.

6. In support of its case the union has filed Affidavit of only one witness, namely, the workman, Janta Singh, who has fully supported his case made out in the written statement. The witness was cross-examined by the management. No documentary evidence has been produced by any of the parties.

7. Now only question is to be decided as to whether the age of the workman as 26 years is correct either in the year 1969 or in the year 1973 and as to whether the action of the management in denying the age of the workman as 26 years as on February, 1973 is legal and justified. In this regard it is admitted by the management that the workman was initially appointed in service in February, 1973 and accordingly his date of appointment has been corrected by the management on the service record. It has been also admitted by the management that no sooner in the year 1987 the workman received the format of service excerpt he raised dispute regarding correction of his date of appointment and his age. It is also admitted that the claim of the workman regarding correction of date of appointment was accepted. It will be very important to consider that the workman was not appointed in the yeay 1969 and hence assessment of his age as 26 years as in the year 1969 does not appear to be probable. There was no such occasion before the management to assess the age of the workman in the year 1969 when he was initially appointment in the year 1973. It has been admitted by the management that on the service record initially the date of appointment of the workman was wrongly recorded as 4-8-1969 and it appears natural that when the date of appointment of the workman was wrongly recorded as 4-8-1969 instead of correct date of appointment as February, 1973 due to clerical mistake and hence accordingly due to clerical mistake his age as 26 years was wrongly recorded in the year, 1969. When the workman was initially appointed in February, 1973 it was the only occasion to assess his age either on the statement of the workman or on any basis and to record the same on the service record. Learned lawyer for the management could not assign any reason as to how the age of the workman would be assessed in the year 1969. In this view of the matter I am of the opinion that the claim of the workman regarding his age appears to be probable and believable and hence 26 years of his age should be recorded as on February, 1973. In this view of the matter I find and hold that the action of the management of Nimcha Colliery in denying the date of birth of the workman as 26 years as on February, 1973 is not legal and justified and hence the management is directed to get the age of the workman corrected on service record as 26 years as on February, 1973. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 30 अप्रैल, 2003

का. आ. 1514.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल (संदर्भ संख्या 61/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-04-2003 को प्राप्त हुआ था।

[सं. एल-22012/486/99-आई. आर.(सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 30th April, 2003

S.O. 1514.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 61/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 29-04-2003.

[No. L-22012/486/99-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL ASANSOL

In the matter of a reference U/s. 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 61 of 2000.

Parties : Employers in relation to the management of the Agent, E.C.L.

and

Their Workmen.

Present : Shri Ramjee Pandey,

Presiding Officer.

APPEARANCES:

For the Employers : Shri P. Goswami, Advocate

For the Union/workman : Shri S.K. Pandey, Chief General Seccretary of Koyla Mazdoor Congress.

State : West Bengal Industry : Coal.

Dated, the 28th March, 2003.

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Government of India, Ministry of Labour, by its Order No. L-22012/486/99/IR(CM-II) dated 13-7-2000, has referred the following dispute for adjudication by this Tribunal :

> "Whether the action of the management of Satgram (R) Colliery under Sodepur Area of ECL in dismissing the services of Sh. Panchu Sethi, U.G. Loader by holding ex-parte enquiry is legal and justified? If not, to what relief the workman is entitled?"

2. In response to the summons issued by the Tribunal both the parties appeared through their respective representatives. Sri P. Goswami, Advocate, appeared for the management and Sri S.K. Pandey, Chief General Secretary of K.M.C. appeared for the union. Both the parties filed their respective written statements and contested the dispute.

2A. The facts of the case, in brief, are that the workman, namely, Panchu Sethi, was an employee of M/s. ECL posted at Satgram (R) colliery under Sodepur Area as U.G. Loader. He was dismissed from his service on the charge of unauthorised absence from 31-1-97 to 2-12-97. The union has challenged the order of dismissal by raising the dispute.

3. The case of the union, in brief, is that the workman had gone to his native village where he fell sick and due to his sickness he over-stayed there but informed the management in writing by registered post with A/D. But the management issued a charge-sheet and after concluding ex-parte enquiry dismissed him from service. The workman did not receive either the charge-sheet or the notice of enquiry and at the time of domestic enquiry he was not given opportunity to be heard and hence the enquiry was not conducted in accordance with the principle of natural justice, as such, the order of dismissal is illegal and unjustified. It has been further stated that actually no proper enquiry was conducted rather the same is only paper transaction and on this score also the enquiry report is baseless and void abinitio. Further case of the union is that although the workman sent the medical certificate to the management by registered post, but the same was not considered and in any view of the matter the punishment of dismissal from service is harsh and disproportionate to the nature of misconduct alleged and accordingly a prayer has been made to direct the management to reinstate the workman in service with back wages after holding that the dismissal is void.

4. The case of the management, in brief, is that the workman remained absent from his duty during the alleged period without any leave or prior permission of the management and hence the absence of the workman was unauthorised and the same is misconduct in the meaning of Clause 17(1) of the Modal Standing Orders. A charge-sheet was issued to the workman and thereafter a domestic enquiry was conducted. Inspite of the notice of enquiry the workman did not appear and hence the Enquiry Officer concluded the enquiry ex-parte and during enquiry the

charge against the workman was established. After careful scrutiny of the enquiry report and considering all other aspects the competent authority came to the conclusion that the charge against the workman was established and the punishment of dismissal is proper punishment and accordingly the workman was dismissed from service. It is further stated that no medical certificate sent by the workman was received by the management and the allegation of the union in this regard is not correct. It is further stated that the punishment of dismissal from service is legal and justified and the workman is not entitled to any relief.

5. Although in its written statement the union has alleged that the workman neither received the chargesheet nor the notice of enquiry and he was not given opportunity to be heard but at the time of hearing on the point of fairness and validity of enquiry proceeding the union did not challenge the same and accordingly by order dated 10-3-2003 the enquiry proceeding has been held to be valid.

6. First point for consideration is as to whether the charge against the workman has been established and the finding of the Enquiry Officer in this regard is correct. It is admitted by the union that the workman was absent from his duty from 31-1-97 to 2-12-97. It is also admitted that the workman had not obtained leave for this period. In defence of the workman only plea has been taken by the union that due to sickness the workman could not attend his duty for such a period. It is admitted by the union that the workman did not appear before the Enquiry Officer and could not give any evidence in support of his defence assigning the reason of his absence from duty. From the enquiry report also it is clear that no evidence was adduced by the workman to the effect that he was sick and due to sickness he could not attend his duty and hence the Enquiry Officer has rightly come to a finding that absence of the workman was unauthorised and the charge against him has been established.

7. Next point for consideration is as to whether the punishment of dismissal from service of the workman is legal, justified or the same is harsh and disproportionate to the nature of misconduct. In this regard the representatives of the union submitted that although the workman has not proved the fact of his illness, but it is specific case of the workman that he was sick and due to sickness he could not attend duty and this fact has not been denied by the management. He further submitted that in past no misconduct was committed by the workman and hence absence from duty for such a period is not a gross misconduct and hence the maximum punishment of dismissal from service is disproportionate and harsh. On the other hand, the learned lawyer for the management submitted that the workman remained absent from duty continuously for more than ten months and considering the long period of unauthorised absence the punishment of dismissal cannot be said to be harsh and disproportionate. But the learned lawyer fairly admitted that there is nothing on the record to show that the workman ever committed any misconduct of any type in past.

8. From the above submissions of both the parties it is clear that the workman did not commit any misconduct in past and his past record is clear. I agree with the submission of the representative of the union that unauthorised absence from duty is not a gross misconduct attracting punishment of dismissal from service and hence I find and hold that the order of dismissal from service is harsh and disproportionate to the nature of misconduct and accordingly I find and hold that the action of the management dismissing the workman is not justified and hence the order of dismissal is set aside. The management is directed to reinstate the workman in service. It has been neither pleaded nor proved by the management that the workman was gainfully employed during the period after his dismissal from service, howevr, considering the fact that the workman has committed misconduct of unauthorised absence from duty for a long period he will be entitled to only 20% of the back wages. In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1515.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 183/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2003 को प्राप्त हुआ था।

[सं. एल-20012/362/97-आई. आर.(सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1515.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 183/98) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-20012/362/97-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI B. BISWAS,

Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 183 OF 1998

PARTIES : The Employers in relation to the management of Govindpur Area of M/s. B.C.C. Ltd. and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri D.K. Verma, Adv. Authorised Representative.

State : Jharkhand Industry : Coal

Dated, the Dhanbad, 2nd April, 2003

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/362/97-I.R. (C-I), dated, the 27th April, 1998.

SCHEDULE

"Whether the action of the management not Regularising Shri B. Prasad Lala in clerical Grade is Genuine and justified ? If not, to what relief the concerned workman is entitled to?."

2. In this reference neither the concemed workman nor his representative appeared. However, the management side appeared through their authorised representative and filed authorisation in this reference before this Tribunal but did not submit any written statement. It is seen from the record that the instant reference was received by this Tribunal on 22-9-1998 and since than it is pending for disposal. As the concerned workman failed to appear, registered notices and show cause notice were issued to the workman side but inspite of issuance of notices they failed to appear before this Tribunal. They also did not even respond to the notices issued by the Ministry for its disposal. The reference is made by the Ministry for its disposal. The referfence is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S./documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter *sue moto* with the expectations for appearance of the workman inspite of issuance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any Industrial diuspute. The disputes are mainly raised by the Union for their workman. These unions inspite of receiving notices do not care to appear before the Court for the interest of the workman and as result they have been deprived of getting any justice. Untill and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1516.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 146/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2003 को प्राप्त हुआ था।

[सं. एल-20012/238/2001-आई. आर. (सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1516.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 146/2001) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-20012/238/2001-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 146 of 2001

PARTIES:

Employers in relation to the management of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri S. N. Ghosh, Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 4th April, 2003

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/38/2001 (C-I), dated, the 30th April, 2001.

SCHEDULE

"KYA BHARAT COKING COAL KEY PRABANDHTANTRA DWARA SHRI RAM JANAM CHOUHAN KI SEWAYEN PIECE RATE TRAMMER KE PAD PAR 24-2-98 SE NIYAMIT NA KIYA JANA UCHIT AUR NYAY SANGAT HAI, YADI NAHI TO UKT KARMKAR KIS RAHAT KE PATRA HAI?"

2. In this reference neither the concerned workman nor his representative appeared. However, the management side appeared through their authorised representative and filed authorisation in this reference before this Tribunal but did not submit any written statement. It is seen from the record that the instant reference was received by this Tribunal on 1-6-2001 and since then it is pending for disposal. As the concerned workman failed to appear, registered notices were issued to both the workman side but inspite of the issuance of notices they failed to appear before this Tribunal. They also did not even respond to the notices issued by this Tribunal. In natural course the question will arise that will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002 (94) FLR 624 it will not be just and proper to pass a 'No dispute' Award when both parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and avallable documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S./documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter *suo moto* with the expectations for appearance of the workman inspite of issuance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workman. These unions inspite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Until and unless the attitude of the union is changed, I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1517.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 173/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2003 को प्राप्त हुआ था।

[सं. एल-20012/313/2000-आई. आर.(सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1517.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 173/2000) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-20012/313/2000-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI B. BISWAS,

Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

REFERENCE NO. 173 OF 2000

PARTIES : Employers in relation to the management of Sendra Bansjora Colliery of M/s. BCCL and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri H. Nath, Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad the 3rd April, 2003

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/313/2000 (C-I), dated, the 27th November, 2000.

SCHEDULE

"Whether the action of the management of Sendra Bansjora Colliery of M/s. BCCL in denying to regularise Sri Ram Pyare Prasad Tech. & Supervisory Grade 'A' is justified and fair? If not, to what relief the concerned workman is entitled?"

2. In this reference neither the concerned workman nor his representative appeared. However, the management side appeared through their learned Advocate and filed W.S. It is seen from the record that the instant reference was received by this Tribunal on 22-12-2000 and since then it is pending for disposal. The concerned workman failed to appear, registered notices were issued to the workman side but inspite of issuance of notices they failed to appear before this Tribunal. They also did not even respond to the notices issued by this Tribunal. In natural course the question, which will arise, what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to [illegible] to dispose of the reference in issue on merit in view of the decision reported in 2002(94) FLR 624. It will not be just and proper to pass No dispute Award since both parties remain absent. There is also no scope [illegible] reference on merit in absence of any W.S. [illegible] documents. There is no dispute to hold that [illegible] reference is made it is expected to be disposed [illegible] merit but when the parties do not take any step or do not consider even to file W.S./documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo moto with the expectations for appearance of the workman inspite of issurance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workman. These unions inspite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Until and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1518.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 144/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2003 को प्राप्त हुआ था।

[सं. एल-20012/41/2001-आई. आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1518.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 144/2001) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-4-2003.

[No. L-20012/41/2001-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI B. BISWAS,

Presiding Officer

In the matter of an Industrial Dispute under Section 10 (1)(d) of the I.D. Act, 1947

REFERENCE NO. 144 OF 2001

PARTIES : Employers in relation to the management of M/s BCCL and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri D. K. Verma, Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 3rd April, 2003.

ORDER

The Govt. of India, Ministry of Labour, in exercise of powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/41/2001 (C-I), dated, the 30th April, 2001.

SCHEDULE

"KYA BHARAT COKING COAL LIMITED, GOVINDPUR KSHETRA III KEY PRABANDHTANTRA DWARA SHRI SULEMAN MIA, JINHEY KHAR KHARI COLLIERY SEY MAHESHPUR KO STHANANTARIT KIYA GAYA, KI JANMA TARIKH KHARKHAREE COLLIERY MEY UPALABDH SEVA RECORD MEY DARJ TITHI KEY ANURUP 20-9-49 NA MANNA UCHIT EVAM NAYAY SANGAT HAI? YADI NAHT TO KARMAKAR KIS RAHAT KEY PATRA HAI?"

2. In this reference neither the concerned workman nor his representative appeared. However, the management side though appeared before this Tribunal did not file authorisation and W. S. It is seen from the record that the instant reference was received by his Tribunal on 1-6-2001 and since then it is pending for dispesal. The cencerned workman failed to appear, registered netices were issued to the workman side but inspite of issuance of notices they failed to appear before this Tribunal. They also did not even respond to the notices issued by this Tribunal. In natural course the question will arise what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002 (94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S./documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo moto with the expectations for appearance of the workman inspite of issuance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workman. These unions inspite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Until and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1519.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 333/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2003 को प्राप्त हुआ था।

[सं. एल-20012/395/99-आई. आर. (सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1519.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 333/99) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C.C. L. and their workman, which was received by the Central Government on 24-4-2003.

[No. L-20012/395/99-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI B. BISWAS,

Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 333 OF 1999

PARTIES : Employers in relation to the management of M/s. C. C. L. and their workman.

APPEARANCES :

On behalf of the workman : None.

On behalf of the employers : Shri D. K. Verma, Advocate.

State : Jharkhand Industry : Coal

. Dated, Dhanbad, the 3rd April, 2003.

ORDER

The Govt. of India, Ministry of Labour, in exercise of powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/395/99 (C-I), dated, the 3rd December, 1999.

SCHEDULE

"Whether the action of the management of Rajrappa Project, M/s. C.C. Ltd. P. O. Rejrappa, Dist. Hazaribagh in dismissal of Sri Vijay Narain, Cat. I (PIS No. 11146396) from the services of the company w.e.f. 17-12-1998 vide dismissal Order No. CGM(R) (Pers.) 6/98/2446 dt. 15/16-12-98 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. In this reference neither the concerned workman nor his representative appeared. However, the management side though appeared before this Tribunal did not file authorisation and W.S. It is seen from the record that the instant reference was received by this Tribunal on 14-12-99 and since then it is pending for disposal. As, the concerned workman failed to appear, registered notices were issued to the workman side but inspite of issuance of notices they failed to appear before this Tribunal. They also did not even respond to the notices issued by this Tribunal. In natural course the question will arise what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass 'No dospute' Award when both parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S./documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo moto with the expectations for appearance of the workman inspite of insuance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workman. These unions inspite of receiving notices do not care to appear before the Court for the insterest of the workman and as a result they have been deprived of getting any justice. Until and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1520.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 334/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2003 को प्राप्त हुआ था।

[सं. एल-20012/397/99-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1520.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 334/99) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-20012/397/99-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI B. BISWAS,

Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 334 OF 1999

PARTIES : Employers in relation to the management of M/s. B. C. C. L. and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri D. K. Verma, Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 3rd April, 2003.

ORDER

The Govt. of India, Ministry of Labour, in exercise of powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/397/99 (C-I), dated, the 2nd December, 1999.

SCHEDULE

"Whether the dismissal of Sri Paltu Mallick, M/Loader from the service of the company by the management of Bhagaband Colliery of M/s. BCCL is proper and justified ? If not, to what relief the workman is entitled?"

2. In this reference neither the concerned workman nor his representative appeared. However, the management side appeared through their authorised representative and filed authorisation in this reference before this Tribunal but did not submit any written statement. It is seen from the record that the instant reference was received by this Tribunal on 14-12-99 and since then it is pending for disposal. As the concerned workman failed to appear, registered notices were issued to both the workman side but inspite of issuance of notices they failed to appear before this Tribunal. They also did not even respond to the notices issued by this Tribunal. In natural course the question will arise what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass 'No dospute' Award when both parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S./documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo moto with the expectations for appearance of the workman inspite of insuance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workman. These unions inspite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Untill and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1521.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 13/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2003 को प्राप्त हुआ था।

[सं. एल-20012/383/2000-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1521.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Govemment hereby publishes the award (Ref. No. 13/2001) its of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial

Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-20012/383/2000-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

SHRI B. BISWAS,
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 13 OF 2001

PARTIES : Employers in relation to the management of M/s B. C. C. L. and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri R. N. Ganguly, Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 3rd April, 2003.

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/383/2000 (C-I), dated, the 25th January, 2001.

SCHEDULE

"KYAB.C.C.L KUSTORE KSHETRA KE PRABANDHANTANTRA DWARA SHRI BALESHWAR BHUTIA, TRAMAR KO AYU NIRDHARAN KE LIYE CHIKITSA BOARD/AYU NIRDHARAN SAMITY KEY SAMAKSHA NA VEJA JANA BIDHIBAT, UCHIT EVAM NAYA SANGAT HAI? YADI NAHI TO KARMKAR KIS RAHAT KEY PATRA HAI?"

2. In this reference neither the concerned workman nor his representative appeared. However, though the management side appeared through their learned Advocate did not file W.S. It is seen from the record that the instant reference was received by this Tribunal on 14-2-2001 and since then it is pending for disposal. As the concerned workman failed to appear, before this Tribunal registered notices were issued to the workman side but inspite of issuence of notices they failed to appear before this Tribunal. they also did not even respond to the notices issued by this Tribunal. In natural course the question will arise/what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S./documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter sue moto with the expectations for appearance of the workman inspite of instance of registered notices. As per I.D. Act, the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workman. These unions inspite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Untill and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the co-operation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1522.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके [illegible]कारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्यो[illegible] अधिकरण-II धनबाद के पंचाट (संदर्भ संख्या 204/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2003 को प्राप्त हुआ था।

[सं. एल-20012/558/97-आई. आर. (सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1522.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref.No. 2048/98) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-20012/558/97-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL (NO. 2) AT DHANBAD

PRESENT:

SHRI B. BISWAS,
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 204 OF 1998

PARTIES : The Employers in relation to the management of C.V. Area of M/s B. C. C. L. and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri B. M. Prasad, Adv. Authorised Representatives.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 2nd April, 2003.

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/558/97- coal-I, dated, the 30th November, 1998.

SCHEDULE

"Whether the action of the management of C.V. Area of BCCL in dismissing Smt. Sohagi Majhian of NLOCP from the services of the company is justified ? If not, to what relief the workman is entitled ?"

1332 GI/03—8

2. In this reference neither the concerned workman nor his representative appeared. However, the management side appeared through their authorised representative and filed authorisation in this reference before this Tribunal but did not submit any written statement. It is seen from the record that the instant reference was received by this Tribunal on 15-12-1998 and since then it is pending for disposal. As the concerned workman failed to appear. Accordingly, registered notices were issued to the workman side as well as the management but inspite of the issuance of notices they failed to appear before this Tribunal. They also did not even respond to the notices issued by this Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass 'No Dispute' Award when both parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S./documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo moto with the expectations for appearance of the workman inspite of issuance of registered notices. As per I.D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial disputes The dispute are mainly raised by the Union for their workmen. These unions inspite of receiving notices do not care to appear before the Court for the interest of the workman and as result they have been deprived of getting any justified. Until and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1523.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 324/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-03 को प्राप्त हुआ था।

[सं० एल-20012/278/99-आई आर (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S. O. 1523.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 324/99) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-20012/278/99-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. BISWAS, Presiding Officer.

In the matter of an Industrial Dispute Under Section 10(1) (d) of the I. D. Act, 1947

Reference No. 324 of 1999.

PARTIES:

Employers in relation to the management of Mugma Area of M/s. ECL and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri B. M. Prasad, Advocate.

State : Jharkhand. Industry : Coal.

Dated, Dhanbad, the 4th April, 2003

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/278/99-(C-I), dated, the 26th November, 1999.

SCHEDULE

"Whether the action of the management of Badjna Colliery under Mugma Area of E.C.L. in keeping Sri Hakik Mia, Underground loader without work from 06-06-92 to 24-10-94 and not paying wages for the period is justified ? If not, to what relief the concerned workman is entitled?"

2. In this reference neither the concerned workman nor his representative appeared. However, though the management side appeared through their learned Advocate but did not file their W.S. It is seen from the record that the instant reference was received by this Tribunal on 8-12-99 and since then it is pending for disposal. As the concerned workman failed to appear before this Tribunal, registered notices were issued to the workman side but inspite of the issuance of notices they failed to appear before this Tribunal. They also did not even respond to the notices issued by this Tribunal. In natural course the question will arise what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of the dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in on merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed on merit but when the parties do not take any step or do not consider even to file W/S documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter *suo moto* with the expectations for appearance of the workman inspite of issuance of registered notices. As per I. D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workmen. These union inspite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Until and unless the attitude of the union is changed, I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1524.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 121/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-03 को प्राप्त हुआ था।

[सं० एल-20012/335/98-आई आर (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1524.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 121/99) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-20012/335/98-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. BISWAS, Presiding Officer.

In the matter of an Industrial Dispute Under Section 10(1) (d) of the I. D. Act, 1947

Reference No. 121 of 1999.

PARTIES:

Employers in relation to the management of M/s. B.C.C.L. and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri P. K. Jha, Advocate.

State : Jharkhand. Industry : Coal.

Dated, Dhanbad, the 4th April, 2003

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/335/98-IR(C-I), dated, the 17th February, 1999.

SCHEDULE

"Whether the action of the management in dismissing Shri Baijnath Kumar, M/Loader of Lohapatty Colliery from service with effect from 3/5-7-97 is justified ? If not, to what relief the concerned workman is entitled?"

2. In this reference neither the concerned workman nor his representative appeared. However, though the management side appeared through their learned Advocate did not file their W.S. It is seen from the record that the instant reference was received by this Tribunal on 12-7-99 and since then it is pending for disposal. As the concerned workman failed to appear before this Tribunal, registered notices were issued to the workman side but inspite of the issuance of notices they failed to appear before this Tribunal. They also did not even respond to the notices issued by this Tribunal. In natural course the question will arise what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of the dispute raised by the concerned workman/ union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issued on merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file WS/ documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter *suo motu* with the expectations for appearance of the workman inspite of issuance of registered notices. As per I. D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workmen. These union inspite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Until and unless the attitude of the union is changed, I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for dispos l on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1525.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 19/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-2003 को प्राप्त हुआ था।

[सं० एल-20012/391/2000-आई आर (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1525.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2001) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-20012/391/2000-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. BISWAS, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 19 of 2001

PARTIES:

Employers in relation to the management of M/s. B.C.C.L and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri U. N. Lall, Advocate.

State : Jharkhand. Industry : Coal.

Dated, Dhanbad, the 3rd April, 2003

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/391/2000 (C-1), dated, the 25th January, 2001.

SCHEDULE

"KYA B. C. C. L Bastacolla Kshetra Key Prabandhtontra Dwara Shri Manik Bauri Miner Loader Piece Rate ko time rate mey rope puller ke pad per Niyamat na Kiya Jana Sahi, Nayasangat Evam Uchit Hai ? Yadi Nahi to Karmakar kis rahat key patra hai Tatha kis Tarikh sey ?"

2. In this reference neither the concerned workman nor his representative appeared. However, though the management side appeared through their learned Advocate but did not file their W.S. It is seen from the record that the instant reference was received by this Tribunal on 8-2-2001 and since then it is pending for disposal. As the concerned workman failed to appear before this Tribunal, registered notices were issued to the workman side but inspite of the issuance of notices they failed to appear before this Tribunal. They also did not even respond to the notices issued by this Tribunal. In natural course the question will arise what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of the dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference issue on merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S./documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo motu with the expectations for appearance of the workman inspite of issuance of registered notices. As per I. D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workmen. These union inspite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Until and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1526.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II धनबाद के पंचाट (संदर्भ संख्या 62/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2003 को प्राप्त हुआ था।

[सं० एल-20012/65/2000-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1526.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 62/2000) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-4-2003.

[No. L-20012/65/2000-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. BISWAS, Presiding Officer.

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I. D. Act, 1947

Reference No. 62 of 2000

PARTIES:

Employers in relation to the management of M/s. B.C.C.L and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : Shri H. Nath, Advocate.

State : Jharkhand. Industry : Coal.

Dated, Dhanbad, the 3rd April, 2003

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/65/2000 (C-I), dated, the 29th January, 2001.

SCHEDULE

"Whether the demand of the Union to regularise Sri Kanhai Ram as underground Munshi from the management of BCCL, PB Area is proper and justified? If so, to what relief is the concerned workman entitled and from what date."

2. In this reference neither the concerned workman nor his representative appeared. However, the management side though appeared before this Tribunal did not file authorisation and W.S. It is seen from the record that the instant reference was received by this Tribunal on 2-8-2000 and since then it is pending for disposal. As the concerned workman failed to appear, registered notices were issued to the workman side but inspite of issuance of notices they failed to appear before this Tribunal. They also did not even respond to the notices issued by this Tribunal. In natural course the question will arise what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of the dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002(94) FLR 624 It will not be just and proper to pass 'No dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S./documents such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo motu with the expectations for appearance of the workman inspite of issuance of registered notices. As per I. D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. The disputes are mainly raised by the Union for their workmen. These unions inspite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Untill and unless the attitude of the union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation of both sides. Here the record will clearly expose that sufficient opportunities had been given to the workman/union but yielded no result. This attitude shows clearly that the workman side is not interested to proceed with the hearing of the case for disposal on merit.

Under the facts and circumstances, I also do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1527.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II धनबाद के पंचाट (संदर्भ संख्या 63/93 (पुराना) और (196/98 नया) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2003 को प्राप्त हुआ था।

[सं० एल-20012/230/92-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1527.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref No. 63/93 (Old) 196/98 (New)] of the Central Government Industrial Tribunal II, Dhanbad now as shown in the annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-4-2003.

[No. L-20012/230/92-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. BISWAS, Presiding Officer

In the matter of an Industrial Dispute Under Section 10 (1) (d) of the I. D. Act, 1947

Reference No. 67 of 1993(old).

Reference No. 196/98 (New)

PARTIES:

Employers in relation to the management of M/s. B.C.C.L and their workman.

APPEARANCES:

On behalf of the workman : Shri B.N. Singh, General Secretary, National Coal Workers Congress

On behalf of the employers : Shri D. K. Verma, Advocate

State : Jharkhand. : Industry : Coal.

Dated, Dhanbad, the 10th April, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 had referred the following industrial dispute to the Central Govt. Industrial Tribunal (No. 1) Dhanbad vide Ministry's Order No. L-200212 (230)/92. IR (Coal- I) dated, the 18-2-93. Subsequently as per order of the hon'ble High Court of Judicature at Patna, Ranchi Bench in C.W.J. C. No. 3626/97/R the said reference has been transferred to this Tribunal and Registered as Ref. Case No. 196/98.

SCHEDULE

"Whether the demand of National Coal Workers Congress from the management of Moonidih Colliery under Moonidih Area of M/s. B.C.C.L. for regularisation of 14 workers is justified ? If so, to what relief the workmen are entitled and from which date ?"

NAME OF THE WORKMEN

1. Shri. Subachan Ram
2. " Radha Mohan Pandey
3. " Rabindra Prasad Singh
4. " Binod Kumar
5. " Shaym Sundar Pandit
6. " Damodar Pandit
7. " Nandlal Pandit
8. " Binoy Vishwakarma
9. " Subhash Kumar
10. " Laldee Ram
11. " Shree Shankar Pandit
12. " Anil Kumar Singh
13. " Purushottam Yadav
14. " Ram Nayan Yadav

2. The case of the concerned workmen according to the W.S. submitted by the sponsoring union on their behalf in brief is as follows :—

The sponsoring union submitted that the concerned workmen were in employment from the begining of 1990 to January, 1992 and they were engaged for performing regular/perennial nature of underground works like Tyndal's work, cleaning works, Blasting works, stone/dyke cutting works Drill man's works etc. by the management of Moonidih Colliery/Project under M/s. BCCL directly for all legal and practical purposes. They submitted that inspite of the positions stated above the concerned workmen were dubbed to have been engaged through intermediary/conctractor during the above period through whom the management was to pay them wages etc. at much lesser rate than the rate prescribed for regular workman under the provisions of different NCWAs and other Labour enactment which led to exploitation at pitch. Besides payment of wages to them at much lesser rate, the management denied extension of all other benefits and facilities to them. They submitted that during the period of employment the work of all the concerned workmen from the beginning of 1990 to January, 1992, used to be supervised by the management personnel like Mining Sirdars, Overman, Supervisory staff and executives of Mechanical Engineering Dept. etc. For all practical purposes the so-called intermediaries/contractors were utilised by the management to get Cap Lamps issued to the concerned workmen to go to the underground for performing their jobs to mark their attendance every day, to get gate pass issued to them on monthly basis, to get explosive materials issued to them for using blasting works. They alleged that during the period of employment of the concerned workmen the management adopted pernicious system of issuing work orders to the intermediary/ contractor to get the concerned workmen dubbed as his workers with ulterior motive to deny their legitimate right of regularisation. During the period beginning from 1990 to January, 1992 the management issued a large number of work orders. The sponsoring union have made specific allegation that engagement of the concerned workmen through intermediary/contractor was a pretext, a camouflage and a pernicious tactics of the management to get the concerned workmen dubbed as workmen of the said intermediary/contractor in order to deprive them from their legitimate right of regularisation. They further submitted that during the period of their employment the concerned workmen put in more than 190 days of regular attendance during each calendar year in 1990 and 1991 by perfonning regular/perennial nature of works already mentioned above and as they are entitled for their regularisation on the permanent roll of the management as per clause 7.2 of the Certified Standing Order for workmen of the establishment under BCCL but the management denied to regularise their services. They submitted that since middle of 1991 when the concerned workmen started approaching the management to regularise their services they became their eye sore and when they themselves and through their union started pursuing the management vigorously from December, 1991 for their regularisation the management became vindictive and ultimately stopped them from work after January, 1992. Accordingly they raised an industrial dispute before the ALC(C), Dhanbad for conciliation which ultimately resulted reference to this Tribunal for Award.

3. The management on the contrary after filing W.S.cum-rejoinder have denied all the claims and allegation which the sponsoring union asserted in their W.S. filed on behalf of the concerned workmen. They submitted that the concerned workmen cannot demand for absorption under the management as they had worked on the jobs allotted to M/s. Rewati Raman Tewary Construction, a contractor of Civil and Mines. They submitted that during the year 1991 some contracts were allotted to M/s. Rewati Raman Tewary, Contractor for a temporary period. They disclosed that in course of carrying of Mining Operation in panel E-2 of XVI 'B' Seam at 400 metre horizon a dyke was encountered all of a sudden resulting in burning of coal at a particular point and turning the same into jhama. It having also igneous rock and the progress of the work got disrupted. Accordingly the management wanted to cross

over the dyke by driving an incline shaft by awarding contractor to some specialised contractor and invited tenders from different parties. M/s. Tewari construction submitted its tender and after necessary negotiation his tender was accepted and he was awarded the contract by entering into an agreement dated 14th August, 1991. He was issued the work order for execution of work at the venue of Rs. 2,95,279.16 P. Thereafter the contractor as per terms and conditions of the agreement executed the contract job by engaging his own men and materials. The concemed workmen asserts that they work under him in the aforesaid contract job allotted to the contract. The management had also given contract to M/s. R.R. Tewary for transportation of 62 steel pipes of 4" diametre by work order dt. 26-7-91 for an amont of Rs. 2210/- only. The said contractor was also given the contract job of cleaning and reclamation of slurry from the pond at Moonidih Washery for an amount of Rs. 3,712/- only. The contract which was awarded to the contractor lasted for a few days and in one instant for crossing over the dyke it took about 6 months time intermittently. They submitted that all the jobs awarded to the contractor were temporary in nature and since the jobs were over there was no requirement of doing the same and similar jobs. They submitted further that the contractor selected his own workmen and recruited them for performing the contractual job in question. It was the conractor who paid wages to his employees. The contractor also used to supervise their work and the workmen were under his active control. They were also terminated from service by the contractor as the temporary work was over. The management submitted that these workmen who were the workmen of the contractor and who worked temporarily under the control of the management have placed their demand for regularisation after the contractual job was over.

4. The management submitted categorically that they have no sufficient work to provide regular job to the concerned persons. The management is having surplus labour force and is trying to adjust the surplus workmen to some way or other to avoid retrenchment. In such situation, it is difficult to take the concerned workmen on the roll of the management to provide them on regular jobs. Moreover the concerned workmen have no right to claim regularisation of their services under the management as they were never engaged by the management to perform any job in the mine. They submitted that the claim of the concerned workman is absolutely unjustified and for which they are not entitled to get any relief in view of their prayer.

5. The points to be decided in this reference are :—

"Whether the demand of National Coal Workers Congress from the Management of Moonidih Colliery under Moonidih Area of M/s. BCCL for regularisation of 14 workers is justified? If so, to what relief the workmen are entitled and from which date?"

FINDING WITH REASONS

6. It transpires from the record that the management has examined one witness in support of their claim while the sponsoring Union examined three witnesses in supoort of their claim. From these three witnesses of the workmen it transpires that WW-1 and WW-3 are the wokmen concemed who have prayed for relief according to their prayer while WW-2 was Cap Lamp Issue Clerk of Moonidih Project. In the instant case the sponsoring union on behalf of the concerned workmen have placed their demand for regularisation of the services of the concerned workmen on the ground stated therein. Considering the pleadings and the facts disclosed by both sides I find no dispute to held that the concemed workmen were engaged in doing certain works from begining of 1990 to January, 1992. It is the contention of the sponsoring union that as part of their work the workmen concerned used to perform regular/ perennial nature of work like Tyndal's works, cleaning works, blasting works, stone/dyke cutting works, drill man's works etc. by the management of Moonidih Colliery/Project directly for all legal and practical purposes. The sponsoring union submitted that the story of intermediary which the management have made out is a sham story and the management in the guise of the intermediary actually exploited the services of the concerned workman. They categorically submitted that the said intermediary/ contractor was a camouflage one. Actually the concerned workmen here directly engaged by the management to perform some works during the period in question though they wanted to shield themselves by taking the plea that they were the contractors workmen and had no direct relation with the employer. Therefore, considering the submission of the sponsoring union it transpires that the contractor/intermediary who took up the work in question was a camouflage contractor and in the guise of the said camouflage contract the management actually engaged the concemed workmen and exploited their services and thereafter they stopped their work as they raised their voice for regularisation of their services continuously for more than 190 days during the period in question. The sponsoring union submitted that during the period of employment of the concemed workmen the management adopted a pernicious system of work order to the concerned intermediary/contractor in order to get the concerned workmen dubbed as his workers, with ulterior motive to deny them from legitimate right of regularisation. On the contrary from the submission of the management it transpires that during the year 1990-1991 some contract jobs were allotted to M/s. R. R. Tewary Contractor absolutely on temporary basis. They submitted that in course of carrying Mining Operation in panel E-2 of XVI 'B' Seam at 400 metre horizon a dyke was encountered all of a sudden resulting in burning of coal at a particular point and turning the same into jhama. It was also igneous rock and the progress of the work get disrupted. Accordingly the management decided to cross over the dyke by driving an incline shaft by warding some contract to specialised contractor and invited tenders from different parties. M/s. Tewary Construction submitted its tender and after necessary negotiation his tender was accepted and he was awarded the contract by entering into an agreement dt. 14-8-91. He was issued work order for execution of the work at the venue of Rs. 2,95,279.16P. They submitted that

as per the said agreement the contractor engaged his own men and materials to perform the jobs in question. They further submitted that separate contract was also given to M/s. R. R. Tewary for transportation of 62 steel pipes of 4" diametre by work order dt. 26-7-91 for the amount of Rs. 2,210/- only. The said contractor was also given the contract of cleaning and reclamation of slurry pond at Moonidih Washery for an amount of Rs. 3, 712/- only. They disclosed that the contract was awarded to the contractor which lasted for few days. In one instant for crossing over dykes it took up about 6 months intermittently. They further submitted that all the jobs awarded to the contractor was temporary in nature and since the jobs were over there was no requirement of same and similar kind of jobs. Therefore from the submission of both sides as per pleadings it transpires that while the claim of the sponsoring union is that the concerned workmen directly were engaged by the management for performing regular nature of work in the underground like Tyndal work cleaning works, Blasting works, Stone/Dyke cutting works, Drill man's works etc. The submission of the management on the contrary speaks that they engaged contractor for taking up certain temporary work in the mine and in performing the said job the contractor engaged certain workers and for which in no manner there is scope to say that those workers were directly engaged by them or said contract was sham/ camouflage contrator and in the guise of the sham contractor they engaged those workmen with a view to exploit their services illegally. It is the contention of the sponsoring union that the management not only issued gate passes but also supplied equipment including Cap Lamp for performing the jobs inside the mine by the concerned workmen. They further sumitted that the works of the concerned workmen inside the mines were supervised not only by the Mining Sirdar, Overman but also other supervisory officials of the management. They further submitted that the jobs which were performed by the concerned workmen were within the prohibited category as per Contract Labour (Regulation and Abolition) Act, 1970 and as such the management cannot avoid responsibilities to absorb them in the work roll of the company. On the contrary the management submitted that the documents which they have filed namely work orders bills submitted by the contractors, vouchers relating to payment of bills, wage sheets of the contractor and the attendance register of the contract will indicate that the concerned persons were contractors workers having worked for some days or other under the contractor in connection with the jobs allotted to the contractor. They also relied on the documents which the concemed workmen filed in support of their claim. The management submitted that the sponsoring union was not aware of the relevant circular of the Central Govt. relating to prohibition of engagement of the contractor or workers in the Coal Mines. The relevant circular was issued under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and was published in S.O. 2063 dated June 21, 1988 which is as follows :—

"In exercise of the powers conferred by sub-section (1) of Section 10 of the the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970) and in supersession of the notification of the Government of India the Ministry of Labour No. S.O. 488, dated the 1st February, 1975 published in the Gazette of India, Para II, Section 3, Sub-section (ii) dated the 15th February, 1975, The Central Government after consultation with the Central Board, hereby prohibits employment of contract labour in the work specified in the schedule annexed hereto in all coal mines in the Court.

SCHEDULE

1. Raising or raising-cum-selling of coal ;
2. Coal loading and un-loading ;
3. Over burden removed and earth cutting ;
4. Soft coke manufacturing ;
5. Driving of stone drifts and miscellaneous stone cutting underground.

Provided that the notification shall not apply to the following categories :—

(a) quarries in this North-East Coal Field which can only be worked for a few months every year due to heavy rainfall in the area.

(b) quarries located by the side of the river in Penchavalley and similar other patch deposits which can only be worked when the level of river has gone down and during non-rainy seasons.

(c) loading coal when there is mechancial failure, failure of power or irregular supply of wagon by the railways; and

(d) cutting stone drifts/faults which cannot be detected in advance and are of short-duration say upto six months."

Therefore, as per clause (d) of the said notification it will speak clearly that cutting stone drifts/faults which cannot be detected in advance and or short duration can be carries on engaging contract labour and nature of job is temporary and after completion of that job there is no requirement of workers on such jobs. They submitted that in course of driving of galleries in the coal seam, coal can be exhausted on account of geological distrubances called fault/dyke and it requires to be crossed over by driving stone drift either horizontally or in inclined way so that the continuity of coal seam is established and work can be progressed. They submitted that such structures very rarely occur and existence of such structures remain concealed, till the coal get exhausted. In such a situation it is difficult to get a labour force for driving such stone drift on regular basis. Such structure may be crossed within a period of 1—6 months and engagement of contract labour for carrying on stone work in the stone drift to cross over such structure has been permitted under that notification. They submitted that in the instant case the geological structure namely fault/dyke was required to be crossed within a period of four months at the estimated cost as computed and mentioned in the work order issued to the contractor M/s. R.R Tewary. It was to be crossed by driving

an incline sihaft which is a stone drift to be driven at an inclination to cross-over fault dyke encountered at that particular place. They submitted that since the contractor submitted his tender citing lowest rate his tender was accepted but he was incompetent to complete the job within the stipulated period or extended period and he ultimately surrendered his contract. Out of the contract value of Rs. 2,95,279.16 he could get the job done for Rs. 38,930/- only. Now let us consider if the concerned workmen performed jobs other than the jobs specified to the contractor under direction of the management or not. I have already discussed above under which circumstances the management engaged M/s. R. R. Tewary Construction for taking up the work in question. No evidence on the part of the sponsoring union is forthcoming before this Tribunal that apart from this specified job for which a contract was given, the services of the concerned workmen were exploited by the management. Clause (d) of Section 10 of the Contract Labour (Regulation and Abolition) Act speaks clearly that stone cutting jobs can be given to the contractor and the said job can be performed through workers engaged by the contractor and for which there is no scope to say that performance of such job stand within the prohibited degrees. It is the specific contention of the sponsoring union that the said contract was a camouflage one and actually the management eracting that intermidiary exploited the service of the concerned workmen. In this regard now let us consider the evidence of the workmen. WW-1 during his cross-examination disclosed that they were engaged by M/s. Tewary Construction to undertake certain works in the underground of Moonidih Project. He admitted that the aforesaid firm was awarded work order by the company and they were employed to do those works under the work orders. He disclosed that on every working day the contractor used to give slip, containing names of the concerned workmen and we gave the same to the Cap Lamp Office wherefrom Cap Lamp were issued to them and thereafter they used to go underground for performing the job in question. He further submitted that dyke cutting work was included in the work order in the aforesai contract form. They submitted that dyke cutting work could not be computted in the month of April and they worked on that till they were stopped from work. He further, submitted that Shri R. R. Tewary selected them to work. He also used to note his attendance in the diary for the purpose of making payment. Therefore, this evidence of WW-1 speaks clearly that R.R. Tewary started working inside Moonidih Project as per work order issued by the management. It is also clear that the concerned workmen were engaged by the said contractor to perform the job in question. It is fact that WW-3 i.e. another workman during his evidence denied his appointment by the said contractor i.e. R.R. Tewary or about the facts that they worked under the said contractor. The evidence of WW-3 finds no bearing or conformity with the evidence of WW-1 though it transpires that both WW-1 and WW-3 are the concerned workmen in the instant reference case. Therefore, onus absolutely rests on the sponsoring union to point out who deposed correctly before this Tribunal in order to assert their claim. The sponsoring union in course of evidence have failed to produce a single scrap of paper to show that the concerned workmen were engaged by the management. It is the specific please of the sponsoring union that the said contractor was camouflage contractor and the management erecting that intermediary actually engaged the concerned workmen, exploited their services and thereafter threw them out ignoring regularisation of their services. Therefore, the question is whether the contractor engaged by the management to perform the job in question was a sham/camoulfage contractor or not. Onus absolutely rests on the sponsoring union to establish this fact. I have carefully considered the evidence of WW-1, WW-2 and WW-3 and I have failed to find out any such material relying on which the authenticity of the claim of the concerned union that the said contractor is a camouflage contractor can be substantiated. On the contrary if the evidence of WW-1 is taken into consideration it will expose clearly that the concerned workmen were engaged by the said contractor to perform job in question. He did not utter single word that the said contractor was a sham contractor and actually they were engaged by the management in the guise of the said contractor. WW-3 who also did not disclose anything relying on which it can be ascertained that the said contractor was a sham contractor of the management and actually they were appointed by the management through that sham contractor. The allegation of sham contractor which the sponsoring union has brought has to be considerd with all importance. It should be borne into mind that the management is a public sector undertaking. It is expected that a public sector undertaking like the management should not indulge such illegal acts, particularly when there is no question of any personal gain or loss. Therefore when this serious allegation has been raised by the sponsoring union the onus absolutely rests on them to establish authenticity of this claim.

7. In this connection evidence of MW-1 may be taken into consideration. MW-1 during his evidence disclosed that the concerned workmen were the workmen of R. R. Tewary i.e. the contractor. This witness disclosed that the management used to issue I.D. Card, appointment letter and pay slip to the workers appointed by them. He submitted that the management did not issue any such appointment letter, I. D. Card, pay slip to these workmen for taking up job in the colliery. He submitted that said contractor was issued work order for taking different jobs in the mine which were absolutely temporary in nature. In course of evidence of this witness work orders have duly been marked as exhibits and this witness specially pointed out the work orders marked as Ext. M-7/8 as the work order for performing the job of driving of incline shift through dyke. He disclosed that total value of the work order was Rs. 2,95,270.16p. but the said contractor completed job only for Rs. 38,390.00. As the said contractor failed to complete that constructional work his contract was cancelled and another contractor was engaged to complete the remaining work. The management also relied on the documents marked as Ext. M-3/1. They submitted that dyke cutting was done by the applicants/workmen for 5/6 months only and accordingly bill was paid to them. Considering the evidence of MW-1 and also considering all other aspects including the relevant papers marked as Exts. M-1 to M-1/12, M-2, M-2/11, M-12, M-2/13, Ext. M-3, M-3/1, M-4, Ext. M-5 series Ext. M-6 to M-6/7, M-7 to M-7/8, I find no dispute to hold that the management had undertaken certain works including the work to cross over dyke by driving of incline shaft by issuing tenders and thereafter M/s. Tewary Construction was selected for taking up those works which were absolutely temporary in nature and accordingly issued

work orders. It is further seen that against performance of that work the said contractor submitted bills and pay order accordingly was issued on behalf of the management. Out of the work orders issued for undertaking certain works the work order in relation to take up drivage incline shaft througth dyke was for a longer period and that work order was also issued in favour of contractor R.R. Tewary and to that effect they entered into an agreement with the said contractor marked as Ext. M-7/8. Though the said contractor was entrusted with such delicate job to complete the same he could not complete the said job and for which his work order was cacelled and for the portion of work completed by him the management paid a sum of Rs. 38,930.00 on submission of Bill by the said contractor. The sponsoring union in course of hearing took the plea that the management not only issued gate pass to the concerned workman but also issued safety equipment like Helmet boots etc. They further submitted that the work of these workmen in the mine also were to be supervised not only by the mining Sirdar, Overman but also by superior officers. They sumitted that actually the concerned workmen used to perform their duties under direct control and supervision of the management officials and not by the contractor. Accordingly if all these aspects are considered the sponsoring union submitted that it will indicate that the concerned workmen were engaged by the management through sham intermidry. Learned Advocate for the management on the contrary categorically denying submission of the representative of the sponsoring union submitted that it is the specific responsibility of the principal employer to provide safe working place to the contract labour and to provide safety equipment to them so that they do not get involved in any accident. They submitted that in case of any accident the principal employer would not get any scope to avoid liability for payment of compensation to the contractors workers apart from the scope of their prosecution before the legal forum and for that reason safety equipment were supplied to the workmen of the contractor. Similarly Mining sirdar, overman and other higher officials used to supervise and inspect the work and place from time to time with a view to ascertain if the working condition in the pleaces was safety for the workmen engaged by the contractor. It has been further submitted that principal employer supplied the cap lamp, helmet, boots to the workmen of the contractor as the same are not available in the open market because of the fact that specially designed equipments to be used in the mine. Disclosing all these facts the representation of the management submitted that the management did not commit any mistake in supplying those materials to the workmen of the contractor. He further submitted that as the management supplied those articles to the workmen and also as their works were supervised by the officials of the management there is no reason to believe that the workmen were the workmen of the management. It is the claim of the sponsoring union that in the underground the concerned workmen worked for more than 190 days during the period from 1990 to January, 1992 continuously for which their services deserve to be regularised. Before considering this fact it is to be taken into consideration if the concerned workmen were actually worked under direct control for the management being engaged by them. In view of my discussions above and also considering the documents submitted by the management it transpires clearly that R.R. Tewary was engaged as contractor for taking up certain works absolutely temporary in nature in the mine. This contractor on the basis of work orders issued by the management took up the work in question with the help of his workmen. According to the management the concerned workmen were the workmen of the said contractor. WW-1 during his evidence admitted his fact. Therefore as contractor's workmen if any of them performed job for more than 190 days continuously inside the mine it does not caeate any legal right to place the claim for regularisation of service being the employee of the management. The status of the workman engaged by the management and the status of the workman engaged by a contractor are quite different and in any circumstances it cannot be equated to each other. It is the contractor under whom the entire responsibility rests to look after the welfare of the workmen engaged by him. There is no scope to shark responsibility on the principal employer i.e. the management to take up liabilities and responsibilities of the workmen engaged by the contractor excepting on certain special circumstances. Therefore, the plea taken by the sponsoring union for regularisation of the services of the concerned workmen as they worked inside the mine for more than 190 days cannot be considered as cogent ground for regularisation of their services. The sponsoring union in course of hearing relied on the decisions reported in 1995 Lab I. C. 220 SC, 1961 3 FLR 83, 1987 Lab I. C. 365, S CLJ Vol. 15-112 SC. I have carefully considered all the decisions referred to above and it transpires to me that the question of absorption of the workman in the employment of the management comes in if it is established that the management engaged workmen to perform jobs after Abolition of the Contract Labour (Regulation and Abolition) Act and also if it is established that engagement of these workman were done through intermediaries which had no existence at all. I have already discussed about Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and notification issued in this regard. I have also carefully considered the work orders issued to the contractors to perform certain jobs in the mine. The nature of job for which work order were issued do not come within the prohibited degree as per Contract Labour (Regulation and Abolition) Act, 1970. Therefore, there is no scope to say that the management violated any clause as laid down under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. I have already discussed above that the plea of Sham Contractor was taken by the sponsoring union. Naturally the sponsoring union cannot avoid their responsibility to substantiate this allegation. In view of my discussion above in details I have come to this conclusion that the sponsoring union has lamentably failed to establish that R. R. Tewary was a Sham Contractor and in the name of R. R. Tewary in disguise the management engaged these workmen. I hold that these workmen were out and out workmen of R. R. Tewary and they performed certain jobs which were absolutely temporary in nature and which were not under the prohibited category under Contract Labour (Regulation and Abolition) Act, 1970 as per work order issued by the management. It is seen that the role of contractor was winded up as soon as the work was completed. Accordingly it was the responsibility of the contractor to consider employment of these workmen and there was no scope to say that as the contractor was discharged from his duties

entire liability sharked upon the employer to take the responsibility of these workmen. I, therefore, hold that the claim of the sponsoring union finds no merit and for which the concerned workmen are not entitled to get relief according to their claim. In the result, the following Award is rendered :—

"The demand of National Coal Workers Congress from the management of Moonidih Colliery under Moonidih Area of M/s. Bharat Coking Coal Ltd., P. O. Moonidih, Dist. Dhanbad for regularisation of 14 workmen is not justified. Consequently, the concerned workmen are not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1528.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 209/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-04-03 को प्राप्त हुआ था।

[सं० एल-20012/539/97-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1528.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref. No. 209/98) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-04-2003.

[No. L-20012/539/97-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Biswas,
Presiding Officer.

In the matter of an Industrial Dispute under Section 10 (1) (d) of the I. D. Act, 1947

REFERENCE No. 209 OF 1998.

PARTIES:

Employers in relation to the management of Patherdih Colliery of M/s. B.C.C..L and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employers : None

State : Jharkhand. Industry : Coal.

Dated 3-4-2003

ORDER

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/539/97-IR (C-I), dated, the 30th November, 1998.

SCHEDULE

"Whether the action of the management of Patherdih Colliery of M/s. BCCL in denying the payment of wages to Sri B. B. Pandey, Attencance Clerk for the period from 7-7-95 to 6-1-96 is justified? If not, to what relief the workman is entitled to?"

2. In this reference neither the concerned workman nor his representative appeared before this Tribunal. The management also did not apper in this reference. It is seen from the record that the instant reference was received by this Tribunal on 15-12-1998 and since then it is pending for disposal. Registered notices were also issued to the workman as well as to the management but none of them turned up. In terms of Rule 10 B of the I. D. Central Rules, 1957 submission of W. S. by the concerned workman within 15 days is a mandatory one. The concerned workman not only violated the said provision of the Rules but also did not consider necessary to give any response to the notices issued by the Tribunal. In natural course the question which will arise is what will be the fate of the reference made by the Ministry for its disposal. The reference is made on the basis of dispute raised by the concerned workman/union. Naturally responsibility rests with the concerned workman/union to assist the Court to dispose of the reference in issue on merit. In view of the decision reported in 2002(94) FLR 624 it will not be just and proper to pass 'No Dispute' Award when both the parties remain absent. There is also no scope to answer the reference on merit in absence of any W.S. and available documents. There is no dispute to hold that when any reference is made it is expected to be disposed of on merit but when the parties do not take any step or do not consider even to file W.S. such expectation to dispose of the reference on merit comes to an end. It is not expected that for years together the Court will persue the matter suo moto with the expectations for appearance of the parties inspite of issuance of registered notices. As per I. D. Act the workman excepting under provisions of Section 2A is debarred from raising any industrial dispute. These disputes are mainly raised by the Union for their workmen. These unions inspite of receiving notices do not care to appear before the Court for the interest of the workman and as a result they have been deprived of getting any justice. Untill and unless the attitude of the Union is changed I consider that this uncalled for situation will persist. Definitely it is the duty of the Court to dispose of the reference on merit but it depends on the cooperation on both sides. Here record will clearly expose that sufficient opportunities had been given to the parties but yielded no result. This attitude shows clearly that the parties are not interested to proceed with the hearing of the case for disposal on merit.

In view of the facts and circumstances, I do not find any sufficient reason to drag on the case for an indefinite period. Accordingly as there is no scope to dispose of the reference in question on merit, the same is closed.

B. BISWAS, Presiding Officer

नई दिल्ली, 28 अप्रैल, 2003

का. आ. 1529.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I, धनबाद के पंचाट (संदर्भ संख्या 133/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-4-2003 को प्राप्त हुआ था।

[सं. एल-20012/139/97-आई. आर.(सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 28th April, 2003

S.O. 1529.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 133/1997) of the Central Government Industrial Tribunal-I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 24-4-2003.

[No. L-20012/139/97-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference U/S. 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 133 of 1997

PARTIES:

Employers in relation to the management of Govindpur Area of M/s. BCCL.

AND

Their Workmen.

PRESENT:

SHRI S. H. KAZMI, Presiding Officer.

APPEARANCES:

For the Employers : Shri D. K. Verma, Advocate.

For the Workman : Shri D. Mukherjee, Advocate.

STATE: Jharkhand INDUSTRY: Coal

Dated, the 9th April, 2003

AWARD

By Order No. L-20012/139/97-IR(C-I) dated 23/26-6-1997 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the General Manager, Govindpur Area No. III of M/S. BCCL in dismissing Shri Ashok Prasad Singh, E.P. Electrician Helper w.e.f. 14-6-1995 is justified? If not, to what relief is the workman entitled?"

2. Precisely, the case of the conncerned workman, is that he was working as E.P. Electriciain helper at Kooridih colliery of M/S. BCCL. It has been said that a false and frivolous charge-sheet dated 23/24-12-94 was issued to the concerned workman on the alleged ground of unauthorised use and occupation of company's quarter and it was also alleged therein that the concerned workman rented a quarter allotted to Gobind Bhuiya to an outsider. The concerned workman submitted his reply denying those charges emphatically, but despite the satisfactory explanation furnished, the management constituted an invalid and irregular enquriy. It has also been said that though the charge-sheet issued to the concerned workman did not constitute any misconduct and the allegation as levelled against him was totally false and frivolous even then the concerned workman was proceeded against in said enquiry and was not afforded sufficient opportunity during the enquiry to defend his case. The enquiry was fixed ex-parte and then the biased and prejudiced Enquiry Officer completed the empty formality and submitted his report holding the concerned workman guilty of the alleged misconduct. Further it has been said that even in the illegal and arbitrary ex-parte enquiry the charges levelled against the concerned workman regarding occuption of the said quarter and renting out the same to any person were not established. Neither the alleged occupant of the said quarter was examined nor any legal evidence was adduced. As such, further it is said that the finding of the Enquiry Officer was perverse and not based on evidence on record and despite such nature of finding the management dismissed the concerned workman from his service by letter dated 14-6-1995. It is said that the concerned workman represented before the management against the illegal and arbitrary dismissal order but without any effect and so seeing no other alternative the union raised and industrial dispute on his behalf before the A.L. C.(C), Dhanbad, which also ended in failure due to adamant attitude of the management. Subsequent to that the dispute was referred to this Tribunal for adjudication. Lastly, it has been said that the action of the management was illegal, arbitrary, unjstified as against the principle of natural justice. Prayer has been made for reinstatement of the concerned workman with full back wages.

3. The management's case, on the other hand, in short, is that the concerned workman was residing at Bhuli Township of the company in Qr. No. E-5/277 which was

allotted to him by the company. He indulged in corrupt practices by forcibly copying certain quarters allotted in the name of other workman by using threat and force according to his own convenience and started his business of allotting those quarters to outsiders or his closed relatives and realising rent from them. Further it has been said that the Qr. No. E-5/237 situated at Bhuli Township was allotted to a workman, named Gobind Bhuia. The concemend workman used threat and intimidation to Gobind Bhuia and occupied the said quarter by force and gave the same to an outsider on rent. It is said that as soon as the aforesaid fact came to the knowledge of the management a charge-sheet dated 23/24-12-94 was issued to the concerned workman for commission of misconduct under clause 26.1.9 of the cerfified standing order for commission of misconduct of unauthorised use or occupation of the comany's quarters etc. The concerned workman submitted his reply to the said charge-sheet denying the allegation levelled against him. Finding the explanation to be not satisfactory the domestic enquiry was constituted and Sri Indu Lal, Personnel Manager was appointed as Enquiry Officer who thereafter concucted the enquiry. Further, it has been said that initially the concerned workman appeared during the enquiry and pleaded not guilty when the charge was explained to him. Thereafter on one pretext or other he avoided the enquiry and so ultimately the enquiry was held ex-parte. It is also said that the departmental enquiry was held fairly and properly and the Enquiry Officer ultimately submitted his enquiry report dated 29-3-95 holding the concerned workman guilty of the charge levelled against him and on the basis of the said report finally the concerned workman was dismissed from his service by order dated 14-6-95 under the signature of the Project Officer/Agent of the colliery who was competent disciplinary authority to issue order of dimissal. Lastly, it has been said that the dismissal of the concemed workman was legal, bonafide and justified and he is not entitled to any relief.

In its rejoinder also the management denied or controverted several averments or statements made in workman's written statement and emphatically asserted once again that the charges levelled against the concerned workman were duly established during the enquiry and as such, the action of the management against him was absolutely justified. Likewise in their rejoinder filed on behalf of the workman also several statements made in the management's written statement were controverted or denied and it was alleged that the management mechanically passed an order of dismissal with a malafide intention to victimise the concerned workman.

It is significant to mention at the very outset that during the pendency of the instant reference the issue relating to the fairness of domestic enquiry was taken up as preliminary issue, both sides led their evidence on the said aspect and finally by order dated 15-7-2002 the said enquiry proceeding was held to be fair and proper. Therefore, in view of such developments being made now the only pertinent issue left to be considered for disposal of the instant reference is as to whether the finding arrived at in the enquiry report on the basis of materials produced with respect to the guilt of the concerned workman can be held to be unjustified, improper and perverse or not so as to call for any interference at this stage and also whether the action of the management on the basis of the said report can be taken to be justified or not.

4. It is evident from the above that the concerned workman was proceeded against on the charge of his unauthorised occupation of company's quarter No. E-5/237 situated at Bhuli and letting out the same to the outsiders. The chage-sheet was issued to him for the misconduct under para 26.1.9 of the Certified Standing Order of the company which relates to unauthorised use or occupation of company's quarter. It is also evident from the above that when the said charge-sheet was issued to the concerned workman he submitted his reply dening all those charges, but the management did not find it satisfactory and ordered enquiry. During the enquiry the concerned workman though appeared initially but later did not turn up rather refused to participate in the said enquiry which resulted in fixing the said enquiry ex-parte against him. In course of the enquiry the management adduced its evidence both oral and documentary and then ultimately upon the completion of enquiry the Enquiry Officer submitted his report.

Earlier the workman emphatically challenged the fairness of the domestic enquiry on several counts, but after the same being held as fair and proper now at this stage forcefully it has been asserted that the findings arrived at by the Enquiry Officer are absolutely perverse and the same are based on no legal evidence. As such it has to be seen as to how far these contentions can be said to have merit or substance.

5. The original documents produced in the instant case relating to the domestic enquiry are marked Exts. M-1 to M-6 and out of them Ext. M-3 and M-4 are the enquiry proceeding and the enquiry report respectively. Having gone through the same it appears that during enquiry three wirnesses were examined on behalf of the management including the said person in whose name the said quarter was allotted and several documents were produced and were marked exhibits, such as, letter of allotment, letter of complaint, letter showing the antecedent of the concerned workman etc. It is evident from the materials that the said quarter was earlier allotted to Munia Kamin who lived there for more than three years, but thereafter in the year 1993 Gobind Bhuia and Munia Kamin, permanent workmen of the management submitted a joint representation to the management for mutual exchange of their quarters at Tilatand Township Qr. No. 8. The management conceded

to such request being made and allotted the Qr. No. E-5/237 to Gobind Bhuia which was earlier allotted in the name of Munia Kamin and Qr. No. 8 situated at Tilatand Township which was allotted in the name of Gobind Bhuia was allotted to Munia Kamin. Consequent upon such development it appears that Munia Kamin shifted in the quarter of Gobind Bhuia and handed over the key of the said Qr. No. E-5/237 to Gobind Bhuia but when Gobind Bhuia went to Bhuli for occupying the said quarter he found that the said quarter had been unauthorisedly occupied by Ashok Prasad Singh, the concerned workman and he had let out the same to the outsider. Subsequentely to that it appears that one Ramashish Yadav, Fitter Helper sent an application to the management on 18-4-1994 wherein he stated about the unauthorised occupation of the said quarter by the concerned workmen. As the said quarter was allotted to Gobind Bhuia through mutual exchange the management called for an explanation from Gobind Bhuia whether he was residing in the said quarter or not. Upon that Gobind Bhuia submitted his explanation on 18-12-94 and furnished the information therein that his quarter was forcibly occupied by the concerned workman. Upon the receipt of such communication from the side of Gobind Bhuia the management took up the matter for action and on 24-12-94 the charge-sheet containing the aforesaid allegation was issued to the concerned workman. All those letters sent by way of complaint or explanation and also the order of allotment of quarter on mutual exchange were produced and marked during enquiry and those formed part of the record.

It appears that in his evidence during enquiry also the said Gobind Bhuia narrated all about those facts and stated that when he went to Bhuli Township to occupy the said quarter he found that the concerned workman had forcibly occupied the same and had given the same on rent to the outsider. He further stated that the concerned workman had forcibly taken his L.T.I. also on a paper over which he did not know as to what was written as he is illiterate. The said Munia Kamin was also examined and she also supported the facts relating to allotment of the aforesaid two quarters on mutual exchange. She stated that she handed over the key of the said quarter where she lived earlier to Gobind Bhuia. The third witness examined on behalf of the management was one Arun Rajwar, who as it appears was examined to support the allegation that it had been the practice of the concerned workman to occupy forcibly the quarter of employees of Block-IV and give the same to outsider. The said Arun Rajwar stated that he had gone on leave alongwith his family members leaving his brother, Bhanu Rajwar, but when he returned back from leave he found one outsider residing in his quarter No. 283 and found his brother traceless. Subsequently he came to know from an another employee that the concerned workman forcibly occupied the said quarter and give it on rent to outsider. This witness proved two applications also sent to the management by him regarding the aforesaid fact.

On the bais of such overwhelming materials produced on behalf of the management during the enquiry which remained uncontroverted in view of non-participation of the concerned workman in the said enquiry and when no any material at all was produced on behalf of the concerned workman in defence, the Enquiry Officer held the concerned workman guilty of the charges levelled against him. Upon close scrunity of all those materials produced during the enquiry I have no hesitation in observing that the conclusions arrived at by the enquiry Officer were just and proper and based on materials and the same cannot be termed as unjust or perverse and as such those are not required to be interfered with.

It has been submitted that giving away the quarter on rent is not misconduct under Certified Standing Order and as such the concerned workman could not have been proceeded for the said charge as well. This submission is absolutely devoid of substance. The allegation against the workman was that he occupied the said quarter forcibly and let out the same to others and so quite evidently letting out the quarter on rent was not a separate charge rather the same was very much connected with the main allegation of unauthorised forcible occupation of the said quarter by the concerned workman.

6. With the help of a document marked Ext. W-1 during the stage when evidence was led on behalf of the parties on fairness of enquiry, it has been submitted that allotment of the said quarter in the name of Gobind Bhuia had already been cancelled and so no question arises of unauthorised occupation of the quarter of the said Gobind Bhuia by the workman. Apart from the fact that there is no any mention about such development anywhere either in the pleading of the workman or in the evidence led on his behalf during the preliminary stage, the same was never produced during the enquiry and as such the management never had occasion of denying, controverting or accepting the said fact or development. This apart when the domestic enquiry has already been held as fair and proper the only consideration which is now require to be made is whether finding arrived at on the basis of materials collected during the enquiry can be said to be perverse or not and so quite naturally consideration to the said effect is required to be made after confining to those materials which were brought on record or were produced during the enquiry either in the shape of oral or documentary evidence. Therefore at this stage as per relevant provision of of Industrial Disputes Act nothing beyond those materials can be looked into. However, by citing one judgement of Hon'ble Supreme Court reported in 1973 S.C.L.J. (10) page 159 between the Workman of Firestone Tyre & Rubber Co. and The Management and others, the learned counsel appearing on behalf of the workman has submitted that even after the enquiry being found fair and proper, it is well within the

power of the Tribunal to look into and consider fresh materials produced during the proceeding on behalf of the workman. Having gone through the said decision I find nothing as such being held by the Hon'ble Court. The aforesaid argument, as such, is quite misplaced and has no substance. It has been clearly held in the said decision that if there has been no enquiry held by the employer or if the enquiry is held to be defective it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. Quite evidently the Hon'ble Court has laid down the guideline as to what is required to be done and when there had been no enquiry held or when the enquiry held was found to be defective. It clearly observed that in that event the management can be allowed to lead evidence for the first time before the Tribunal justifying its action. As such, it is appearent that no consideration was made and nothing as such has been held by the Hon'ble Court on the aspect whether a workman can be allowed to lead fresh evidence . merit or not even upon the enquiry being held as fair and proper by the Tribunal. This decision as such is not an authority upon the aforesaid aspect as contended on behalf of the workman.

7. It has been urged on behalf of the workman that extreme punishment of dismissal, as awarded, is not only severe and harsh rather the same is disproportionate to the gravity of charge levelled against the concerned workman. On this aspect the argument from the side of the management is that misconduct on the part of the workman was of serious nature and during enquiry it has also come that such high-handedness of the concerned workman has been noticed in some other cases of same nature also relating to some other workmen and further it has come that the concerned workman has developed he practice of grabbing or forcibly taking occupation of possession of the quarters in the name of others and then letting out the same to the outsiders. In such circumstances the argument is that the workman deserve no other punishment but his dismissal from service and so the punishment as awarded cannot be termed as disproportionate.

It is true that during enquiry one witness has stated about the antecedent of the concerned-workman or about the same nature of conduct shown by him with respect to the quarter of the said witness as well but at the same time it has to be observed that nothing was put forward by the management to show whether upon receipt of any such information any enquiry was ordered or not to find out the truth or any charge-sheet was issued or disciplinary action was taken against the concerned workman in any manner whatsoever. So it is difficult to observe that the antecedent of the concerned workman was bad or such misconduct was committed by him earlier also.

Considering the materials on record, as such, the inflicting of the punishment of dismissal on the concerned workman cannot be hald to be proportionate or commensurate with the gravity of the charge levelled against him.

It has already been held in several decisions of Hon'ble Supreme Court that justice must be tampered with mercy and that erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of a particular establishment. In the instant case, as has been observed above no satisfactory material has been put forward to establish that earlier also there had been such misconduct on the part of the concerned workman. Therefore, instead of awarding extreme punishment it would have been proper to award any other appropriate punishment to the concerned workmen for the proved misconduct. Necessary modification as such is needed as far as quantum of punishment is concerned.

Taking into account the totality of the circumstances involved I am of the view that the interest of justice would be served if the punishment as awarded to the concerned workman is modified to the extent of denial of back wages and also stoppage of one annual increment permanently, upon the reinstatement of the concerned workman in the services of the management. It is needless to observe that if such misconduct is repeated in future by the concerned workman then it would always be open to the management to deal with him in a stringent manner without showing any mercy.

8. The award is, thus, made hereunder :

The action of the General Manager, Govindpur Area No. III of M/s. BCCL in dismissing the concerned workman, Ashok Prasad Singh, E.P. Electrician helper is not justified and the concerned workman, as such, deserves to be reinstated but without back wages and stoppage of one annual increment permanently. Consequently, the management is hereby directed to reinstate the concerned workman on the aforesaid terms within sixty days from the date of publication of the Award.

In the circumstances of the case, however, there would be no order as to cost.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 1 मई, 2003

का. आ. 1530.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री यंग स्टॉक फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में लेबर कोर्ट पुणे के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-05-2003 को प्राप्त हुआ था।

[सं. एल-14011/2/2000-आई. आर.(डीयू)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 1st May, 2003

S.O. 1530.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court, Pune as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Military Young Stock Farm and their workman, which was received by the Central Government on 1-5-2003.

[No. L-14011/2/2000-IR (DU)]

KULDIP RAI VERMA, Desk Officer.

ANNEXURE

BEFORE SHRI P. S. NARKAR, INDUSTRIAL PRESIDING OFFICER,

FIRST LABOUR COURT, AT PUNE.

Reference (IDA) No. 455/2000

BETWEEN:

The Officer Incharge,
Military Young Stock Farm,
Manjiri,
PUNE-412307 ....FIRST PARTY.

AND

General Secretary,
Young Stock Farm Workers Union,
S.No. 81, Elphinston Road,
Kirkee,
PUNE-4121003. ....SECOND PARTY.

In the matter of : Termination of 3 workmen.

Coram : Shri P. S. Narkar, Presiding Officer, First Labour Court, Pune.

Appearances : First Party absent.
Shri A.N. Kulkarni, Advocate for the Second Party.

AWARD

The Desk Officer, Ministry of Labour, Shram Shakti Bhawan, Rafi Marg, New Delhi, has forwarded this reference in exercise of powers conferred by clouse (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 over the following demand of the Young Stock Farm Workers Union.

Demand : "Whether the action of the management of Military Young Stock Farm, Manjiri in terminating the services of Shri Naval Singh Yadav, Shri Pradeep Dyanoba Bhalerao and Shri Nana Daulat Kapre are legal and justified? If not, to what relief the said workmen are entitled?"

2 After receipt of the notice of this Court, the Young Stock Form Workers Union (hereinafter referred to as the 'Second Party' has filed Statement of Claim at Exhibit 7 in respect of only 2 workmen namely-Shri Pradeep D. Bhalerao and Shri Nana Daulat Kapre, stating that the management (hereinafter referred to as the 'First Party') has appointed the workmen S/Shri Pradeep D. Bhalerao and Nana Daulat Kapre as a casual worker with Officer Incharge, Military Young Stock Farm, Manjiri Pune. The activities of the First party falls in the definition of 'Industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and the members of the Applicant/First Party are 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The workmen Shri Pradeep D. Bhalerao and Shri Nana D. Kapre were appointed by the First Party on 7-12-1994 and 21-2-1995 and continuously served as Farm Hand till the date of their retrenchment i.e. 9-1-1999. They served for more than 240 days. The services of the workmen were illegally and wrongfully terminated by the First Party. They were appointed through the Employment Exchange and they were working under the completing the supervision and control of the Officer Incharge of the First Party. After termination of the services, the said work was offered on contract basis which is contrary to the Contract Labour (Abolition and Regulation) Act, 1970. The workmen approached Asstt. Labour Commissioner (Central), Pune and raised their dispute to conciliate the matter. But the First Party did not attend for conciliation before the Asstt. Labour Commissioner (Central), Pune. Thereafter, juniors are appointed whose names are given in the Statement of Claim; though they were not even major. As per the Govt. Rules no person below 18 years shall be appointed for any post with Government. It is further stated that the retrenchment compensation given to Shri Pradeep D. Bhalerao and Shri Nana D. Kapre was lesser than actual payment payable amount as per the Industrial Disputes Act. The termination of the services of the workmen by the First Party is illegal and wrongful action. The First Party offered the same nature of employment on contract basis. It is therefore, prayed that the termination order passed by the Officer Incharge of First Party be quashed and declared null and void, the First Party be directed to take the workmen on regular basis immediately with all consequntial reliefs like backwages, allowances etc.

3. Inspite of proper service of notice vide Exhibit 5, the First Party failed to appear and file Written Statement and hence, vide order dt. 11-11-2002 this matter was proceeded exparte without Written Statement.

4. Accordingly, affidavits of concerned workmen were filed at Exhibit 12 and 13 re-iterating all the facts mentioned in the Statement of Claim. There is nothing contrary to what is stated in the Statement of Claim and affidavit and in absence of the Written Statement or Say on behalf of the First Party, I have no other alternative but, to accept whatever is stated in the Statement of Claim supported by the affidavits.

5. Hence, considering the above facts and documents on record at Exiibit 8, I am of the clear opinion that the action on the part of the First Party in terminating the services of S/Shri Pradeep Dyanoba Bhalerao and Nana Daulat Kapre are not legal and justified. As regards case of Shri Naval Singh Yadav, the Second Party Union has not espoused his cause nor he appeared and filed any Statement of Claim. Therefore, it cannot be held that the termination of services of Shri Yadav is not legal or justified. Hence, this reference is answered into affirmative as far as termination of services of Shri Pradeep D. Bhalerao and Shri Nana D. Kapre. As I have come to the conclusion that the action on the part of the First Party in terminating the services of the 2 workmen is not legal and justified. As a result, the concerned 2 workmen are entitled to reinstatement with consequential benefits. Hence, I proceed to pass the following order.

ORDER

(1) Reference is partly allowed.

(2) The First Party i. e. Military Young Stock Farm, Manjiri, is hereby directed to reinstate Shri Pradeep Dyanoba Bhalerao and Shri Nana Daulat Kapre to their original post with continuity of service and full backwages from the date of their termination.

(3) As regards Shri Naval Singh Yadav, for want of substantiation, the referenee is rejected.

(4) The Desk Officer, Ministry of Labour, Shram Shakti Bhavan, Rafi Marg, New Delhi, be forwarded the copy of this award for further necessary action.

Pune.

Dated : 29th March, 2003.

P. S. NARKAR, Presiding Officer

नई दिल्ली, 1 मई, 2003

का. आ. 1531.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रीजनल मुगा रिसर्च स्टेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय गुवाहाटी के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-2003 को प्राप्त हुआ था।

[सं. एल-42011/19/96-आई.आर.(डीयू)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 1st May, 2003

S.O. 1531.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Guwahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Regional Muga Research Station and their workman, which was received by the Central Government on 1-5-2003.

[No. L-42011/19/96-IR (DU)]

KULDIP RAI VERMA, Desk Officer.

ANNEXURE

IN THE INDUSTRIAL TIBUNAL : GUWAHATI : ASSAM.

Reference No. 13(C) of 1997

Present : Shri H. A. Hazarika,
Presiding Officer,
Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute between :

The Management of
Regional Muga Research Station, Central Silk Board,
Boko

Versus

Their 34th workmen.

Date of Award : 9-4-2003

AWARD

The Govt. of India, Ministry of Labour, New Delhi vide its Order No. L-42011/19/96-IR(DU) dated 27-10-97 referred this Industrial Dispute arose between the employer (hereinafter management) the Regional Muga Research Station, Central Silk Board, Boko and the Boko A.M. G. Kendra Sramik Sanatha (hereinafter workmen) under Section 10 of the Industrial Dispute Act, 1947.

The same is registered by this tribunal being No. 12(C)96 and taken up the proceeding for adjudication on the basis of following issue :

"Whether the action of the management of Regional Muga Research Station, Boko in terminating the services of 34 workmen and not giving them due opportunity of re-employment is justified? If not, what relief the workmen are entitled to?"

On being notified both the parties appeared before this tribunal and filed their respective written statement and other documents.

My predecessor vide his award disposed the referred matter on 13-7-99.

On being aggrived the management challenged the award before the Hon'ble Guwahati High Court bearing No. WP(C) No. 6547/1999.

The Hon'ble High Court vide its judgement and order (oral) dated 12-9-2002 pleased to set aside the impunged award and remitted the referred matter for a fresh adjudication as directed in the related judgement by recording evidence to be adduced by both parties and also directed to dispose the matter as expediously as possible and in case with in the period of six months from the date of appearance of parties before this tribunal.

On appearance of the parties this tribunal very sincerely complied the order of Hon'ble High Court for disposal within prescribed time bound period.

It will be just to note here the case of the management as well as the workmen.

The case of the management in brief is that the Regional Muga Research Station situated at Boko is a department under the administrative control of Central Silk Board under the Ministry of Textile, Govt. of India.

The predominent function of the relevant department is to carry out work for development of the Muga Silk Industry and as envisaged in the Action Plan, apart from research activities, different time beund developmental schemes are also to be implemented from time to time. For these purpose 26 regular Time Scale Farm Workers are working. For implementation of some new time bound developmental schemes the management had to engage casual labourers intermettently on seasonal basis to attend sporadic duties which is numbering about 44 employees during the period of 1992 to 1994. These were purely seasonal to meet additional requirement of casual labourers. This was intimated the District Employment Exchange, Guwahati while list was obtained. The services of said seasonal labourers have been laid off once the time bound work for which they were engaged as seasonal casual labourers. There was stop gap after 59 days at a spell and once the particular work for which they have been engage was completed and their services have been laid off. Hence the question of regularisation of these seasonal labourers does arise at all and as such the 44 numbers of seasonal labourers could not be engage on regular basis. These 44 seasonal labourers were paid for their work at the Regional Muga Research Station, Boko as per Labour & Employment Deptt. Notification No. CLS. 730/75/146 dated 16-5-94.

That the seasonal labourers concern are forwarded a false claim as such not illegible for regularisation/ reinstatement and hence the management prayed to dismiss the reference case.

The case of the workmen is brief from the narration of the written statement is that the workmen are engage to supervise the Muga Plantation. The works entrusted were permanent in nature but not a single workman is allowed to performed more than 58 days at a spell. After 58 days a technical stop-gap break was given. The workmen concern are performing some nature of work as the regular workers are doing. Though 34 workman demanded regularisation before the conciliation officer, the management regularised 12 workers on the seniority basis.

That the stage of processing of regularisation and while the conciliation proceeding was pending 34 workers were laid off terminated from their job. They are entitled for regularisation and prayed to pass an award whereby the management reinstate and regularise their services.

Heard the argument submitted by learned advocate Mr. M. Dutta for the management and Mr. A. Dasgupta, assisted by S. Chakraborty, for the workmen. Also perused written argument submitted for the management as well as for the workmen.

It will be better to note here that prior to earlier award dated 30-7-99 the management examined M.W.1 Sri B. Choudhury M.W.2 Sri A.K. Dutta who were also cross-examined.

After remitance of the case and in compliance of the order pleased to pass by Hon'ble High Court the management examined one M.W. Sri P. Kr. Das who is cross-examined by learned advocate for the workmen Mr. A. Dasgupta in details.

The workmen side also examined W.W. Sri R. Kr. Boro and W.W. Sri K. Ali. Both of them are fully cross-examined by the learned advocate Mr. M. Dutta. The evidences after remitance recorded by my own hand. Perused all the evidence in the record alongwith documents exhibited.

During the argument Mr. M. Dutta agitated much on the point that the Regional Muga Research Station is a Govt. Deptt. meant for the research works and that the concern workmen were appointed on a seasonal casual labourers for certain time bound development scheme and since time bound development scheme abandant the necessity of these seasonal casual labourers ceased to exist the further engagement of these person were not possible. The learned advocate Mr. M. Dutta also agitated that as the management is a Govt. Deptt. carrying research works not an Industry in the strict sense of the term and not within the ambit of Industrial Dispute Act and this tribunal has got no jurisdiction to entertain the matter referred. In support of his contention the learned advocate Mr. Dutta referred a case law 1997(4) SCC 391. Further learned advocate Mr. Dutta stretch that the workers concern were engaged on seasonal and casual labourers and when there were no work they were not retain in the work and there was stop-gap of two and three days after work 58 or 59 days. Hence they cannot be treated in continuation of their services.

Mr. Dutta pointed out that the documents F '10' is the certificate issued in favour of R. Boro as shown the

evidence that he was engaged for a period of 59 days from August, 1993 to October, 1993 and thereafter re-engaged from April, 1994 to June, 1994 for a period of 58 days. Another certificate issued to W.W. Md. K. Ali has not reflect on the true and correct period of engagement as per the argument for the management. Thus Mr. Dutta argued that provision to be adopted under Section 25F of the I.D. Act is not entertainable in the present fact and circumstances of the case. He stretch that there is no evidence in support of the contention of the workers that workmen concern were in continuous service for a period of 240 days or more in a year. Further it was also argued by the management that laid off has claim by the workmen within the meaning of 2/KKK of the I.D. Act is not proved by workmen by creditable evidence.

Inter alia Mr. Dasgupta argued that the claim of the management that the workmen are not within the purview of Industry is not entertainable in accordance with law because the Regional Muga Research Station, Boko used to do developmental scheme with the help of the workmen and also scheme for Muga Silk Industry by creating Muga Polu, Hence he agitated much that the Regional Muga Research Station, Boko under the Deptt. of Govt. of India is an Industry for development scheme Muga Silk Industry. He argued that the case law Himangohu Kumar Bidyarthi and Ors. *Vs.* State of Bihar & Ors. 1997(4) SCC 391 cited by the learned advocate for the management is not befitting in the present fact and circumstances of the referred case.

Mr. Dasgupta further argued that the case law reported in (97) 4 SCC 257 in Physical Research Laboratory *Vs.* K. G. Sarma is not befitting with the instant referred case as Physical Research Laboratory is a research institute and was established by Dr. Vikram Sarabhai for research in space and allied sciences. Mr. Dasgupta also argued that though technically the management allowed the workmen to worked 59 days continously yet the workmen use to work 59 × 6 =354 days in a year. Hence they have completed more than 240 days of work in a year. That the workmen were not terminated for misconduct or retire from service or remove from service due continuous ill health or for any other similarism reason. Hence the present termination treated as retrenchment under section 2 of the I.D. Act, 1947. That the present case of termination is not within the ambit of Clause of (A), (B) and (C) of the Sec. 2 of the I.D. Act, 1947. That for retrenchment the management is to follow mandatory procedure laid down under section 25-F of the Act, but the management failed to comply the procedure for retrenchment. Further Mr. Dasgupta also argued and reflected in his written argument that the written statement of the management itself shows that the workmen worked during the period from 1992 to 1994. They were allowed to work 59 days continuously and thereafter they are laid off. That the laid off period shall be counted for the purpose of continuity of services stipulated in explanation (1) of Section 25 B(2) of the Act.

On carefull scrutiny of the evidence in the record I find the Regional Muga Research Station, Boko use to product polu which is necessary for production of Muga Silk. This is not a research station apparent in the reported case law (97) 4 SCC 257-Physical Research Laboratory *Vs.* K.G. Sarma. It is an Industry. The Regional Muga Reserach Station, Boke is an Industry as per the Act. Hence it is rightly referred by the Govt. concerned for adjudication by this tribunal.

From carefull scrutiny of the documents and evidence in the record what I find that the management side intelligently gave a laid off after working 59 days and after laid off 2 or 3 days they were again engaged and what I find they worked more than 240 days in a year. Hence the management did not follow up the precedure for retrenchment as per Act as discussed herein before. The management adopted a policy to deprive the workmen from continuation of their services. They may be casual labourers, but they were appointed through certain procedure. Hence the termination is not lawfull. In the result I find the management is not justified in terminating the workmen. To answer the issue clearly I would like to mention that the management or Regional Muga Research Station, Boko is not justified in terminating services of 34 workmen and not giving them due opportunity of re-employment. Accordingly the issue answered in favour of the referred workmen and they are entitled for re-employment.

H. A. HAZARIKA, Presiding Officer.

नई दिल्ली, 1 मई, 2003

का. आ. 1532.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रीजनल प्रोविडेन्ट फण्ड कमिश्नर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, पुणे के पंचाट को प्रकाशित करती है, जो केन्द्री सरकार को 1-5-2003 को प्राप्त हुआ था।

[सं. एल-42012/61/2000-आई. आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 1st May, 2003

S.O. 1532.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court, Pune as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Regional Provident Fund Commissioner and their workman, which was received by the Central Government on 1-5-2003.

[No. L-42012/61/2000-IR (D-U)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI CHANDRASHEKHAR INAMDAR, PRESIDING OFFICER,

THIRD LABOUR COURT, PUNE

Reference (IDA) No. 496/2000

BETWEEN:—

The Regional Provident Fund
Commissioner (Central),
Regional Office, Maharashtra & Goa,
341, Bhavishya Nidhi Bhavan,
Bandra (East), Mumbai-400051 .... First Party

AND

Shri Sunil G. Salunke,
503, Bhavani Peth, Harkanagar,
Pune-411042 (Maharashtra) ... Second Party

Subject : In the matter of reinstatement with continuity of service and full back wages.

Coram : Shri Chandrashekhar Inamdar

Advocates : First Party absent.
Shri B. V. Mahadik for Second Party.

(Date: 10-02-2003):

AWARD

1. This reference has been referred by the Desk Officer, Govt. of India, Ministry of Labour, Shram Shakti Bhavan, Rafi Marg, New Delhi-110001 vide their Order No. L-42012/61/2000/IR(DU) dated 31-7-2000 under Sub-section 1(d) and 2(A) of Section 10 of the I.D. Act for adjudication of the dispute between the above referred parties over the following demands :

> "Whether the action of the Regional Provident Fund Commissioner, Grade I, Mumbai in relation to office of the Regional Provident Fund Commissioner, Pune in terminating the services of Shri Sunil Gulab Salunke vide letter dated 24-10-96 is legal and justified ? If not, to what relief the workman is entitled ?"

2. In pursuance to the notice Ex. 2 and 4, the second party appeared through Advocate and filed his statement of claim at Ex. 5. The second party contended that he was appointed as a Safaiwala/Sweeper vide appointment order dated as per the terms and conditions mentioned there and worked for the period of 3 years continuously. The service record of the second party is unblemished. No memo, show-cause notice or chargesheet was issued to him during the service tenure. As per appointment order, after the period of 2 years, he has also rendered one year probation period of service continuously. So, the notice of termination dated 24-10-96 is illegal, in colourable exercise of employer's right and without following the proper procedure of law as per I.D. Act. The second party was not given any opportunity of defence and hence, violated the principles of natural justice by the first party in terminating the services of second party, which is illegal termination and therefore, the second party prayed for reinstatement with continuity of service and full back wages alongwith other consequential reliefs.

3. On behalf of the first party, one Mr. V. D. Yadav, EO/AAO, appeared and sought adjournments vide Ex. 8 on 01-11-2000 and Ex. 9 on 29-12-2000 for filing the written statement, which was granted. Thereafter, the Advocate of the second party vide Ex. 10 prayed to pass no written statement order. My learned predecessor on 22-03-2001 passed an order that though the first party received the copy of statement of claim on 11-10-2000, but since then, no written statement is filed and hence, thereafter the reference was proceeded without written statement of the first party.

4. As the first party did not appear and take any steps to proceed in the reference, the second party vide Ex. 11 on 26-9-2001 sought permission to file claim affidavit by way of evidence. Accordingly, the second party has filed claim affadavit at Ex. 12. I have gone through the said affidavit. The second party has also filed some documents below list Ex. 7, consists of appointment order of second party dated 29-9-93, office order dated 27-10-93 allowing him to resume duty w.e.f. 11-10-93, show-cause notice dt. 24-10-96 for termination, proceeding of Addl. Commissioner of Labour dated 08-9-99, notice of conciliation dt. 17-01-2000, 21-2-2000, notices of conciliation dated 20-10-99, 01-12-99, 27-12-99, letter dt. 7-12-97 by second party to first party office, and failure report dt. 23-3-2000 by which the Asstt. Labour Commissioner (C) Pune clearly intimated to the Secretary, Govt. of India, Ministry of Labour, New Delhi and Shri Sanatan, Desk Officer that the employer—first party was reluctant to extend any sort of relief to the workman. The industrial dispute ended in failure. Further the management was not willing for any arbitration while the workmen was for it.

9. After perusing the overall evidence brought by the second party on record and the claim affidavit filed by the second party below Ex. 12, I find that the second party has corroborated all the contentions as enumerated in his statement of claim Ex. 5. The said contentions of the second party also substantiated by the documentary evidence. As such, since the first party has not taken any steps to proceed in the matter and contest the reference, the fact stated and enumerated have gone unchallenged in absence of first party. In the circumstances, I have no hesitation to hold that the second party has proved his case of illegal termination thereby giving his entitlement of reinstatement

with continuity of service and full back wages alongwith all other consequential benefits. I, therefore, pass the following award :

AWARD

(i) The Reference is hereby allowed.

(ii) The first party is hereby directed to reinstate the Second Party to his original post with continuity of service and full back wages allongwith all consequential benefits, within one month from the date of publication of this award.

(iii) No order as to costs.

Pune : 10-2-2003

CHANDRASHEKHAR INAMDAR, Presiding Officer

नई दिल्ली, 1 मई, 2003

का. आ. 1533.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्टोनमैंट बोर्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, पुणे के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-2003 को प्राप्त हुआ था।

[सं. एल-13011/9/98-आई. आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 1st May, 2003

S.O. 1533.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court, Pune as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Cantonment Board and their workman, which was received by the Central Government on 1-5-2003.

[No. L-13011/9/98-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI P. S. NARKAR, PRESIDING OFFICER,

FIRST LABOUR COURT, PUNE.

Reference (IDA) No. 170/99

BETWEEN:

The Cantonment Executive Officer,
Cantonment Board,
Pune : 411001 .... First Party

AND

Akhil Bhartiya Safai Mazdoor
Congress, 2289, New Modhikhana,
Pune-411001. .... Second Party

AWARD

This reference has been referred by the Desk Officer, Govt. of India, Ministry of Labour, Shram Shakti Bhavan, Rafi Marg, New Delhi-110001 vide their Order No. L-13011/9/98/IR(DU) dated 4-3-1999 under Sub-section 1(d) and 2(A) of Section 10 of the I.D. Act for adjudication of the dispute between the above referred parties over the following demands :

"Whether the action of the Cantonment Board, Pune is not promoting Shri V.E. Shahapurkar, Head Clerk to the post of 1640-2900 is legal and justified ? If not, to what relief the workman is entitled ?"

2. Record shows that, S.P. is absent on several dates and today also. Nobody for him. Issues are framed long back, vide Ex. 21 last chance was given to S.P. Hence, this reference is rejected for want of substantiation and default of the Second Party with no order as to cost. Award accordingly.

Pune :

Dated : 15-1-2003.

P. S. NARKAR, Presiding Officer

नई दिल्ली, 1 मई, 2003

का. आ. 1534.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-1/4 ऑफ 93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-2003 को प्राप्त हुआ था।

[सं. एल-40011/19/91-आई. आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 1st May, 2003

S. O. 1534.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-1/4 of 93) of the Central Government Industrial Tribunal/Labour Court, No. I, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom. Deptt. and their workman, which was received by the Central Government on 1-5-2003.

[No. L-40011/19/91-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1

MUMBAI

PRESENT:

Shri Justice S. C. Pandey, Presiding Officer

REFERENCE NO. CGIT 04/1993

PARTIES:

Employers in relation to the management of Telecom District Manager

AND

Their Workmen

APPEARANCES:

For the Management	:	Shri B.M. Masurkar, Adv.
For the Workman	:	Shri M.B. Anchan, Adv.
State	:	Maharashtra

Mumbai, dated the 3rd April, 2003

AWARD

1. This is a reference made by the Central Government in exercise of its powers conferred upon it under section 10(1)(d) read with section 2A thereof of the Industrial Disputes Act (the Act for short) for resolving the dispute the Department of the Telecommunications (the department for short) and 26 workmen named in the Annexure A to schedule. The workman are represented by the All India Telecom Employees Union. The terms of reference are as follows:—

> "Whether the action of the District Manager, Telecom Circle, Kalyan, in terminating the services of 26 workmen (Annex A) who were working as Casual Labourers and awarding the work to the contractors is justified and legal ?

2. The aforesaid dispute was in respect of 26 workmen mentioned by name in Annexure A. At the outset it may be stated that in the statement made in writing filed on behalf of the union it has been stated that the Union is confining the dispute referred to this tribunal in respect of the following workmen:

(i) Mr. Kashiram Ramchandra More.

(ii) Mr. Shantaram Raghu Ailve.

(iii) Mr. Sadu Dama Dighe.

(iv) Mr. Devram China Bhakre.

In view of the above concession, it is not necessary to consider the dispute of the other 22 workmen. No relief can be granted to 22 workmen other than the persons mentioned above.

3. Shortly stated, the case of the workmen in their Statement of Claim was that the aforesaid four workmen had worked for more than 240 days as casual workers. The services of these workers were illegally terminated. This was so done with a view to award contract to private contractor. A circular dated 26-2-1992 was referred to in the statement of claim.

4. The claim of the Telecom Department is that the workmen cannot question the policy of employment of casual labour through Private contractor. It is asserted by the telecom department that no casual worker has been retrenched by it. The workmen mentioned in the order of reference did not work for 240 days continuously for a period of 12 calender months prior to. It was also asserted out of 26 workmen 2 casual mazdoors/workmen have been taken back. There was no question of reinstatement of these workers.

5. It may be noted that the policy of employing casual workers through private contractors cannot be questioned generally. The earlier Award dated 06-9-1994 passed by this tribunal in Reference No. CGIT-1/93 of 1991 and award dated 06-10-1995. CGIT-2/169 of 1993 also takes the same view. It may be said in fairness to counsel for the Union of workmen that he has not argued that legal position is otherwise.

6. The only question, therefore, can be considered by this tribunal is if the termination of the services of these workmen amounted to retrenchment within the meaning of section 25-F of the Act. If it be so, then whether the workmen could claim reinstatment and further if they could claim absorption as argued on behalf of the workmen.

7. The affidavit of the workman Kashiram Ramchandra More is to the effect that he was appointed as a General Mazdoor since 01-10-1998 by Kalyan Telecom. His services were terminated on 01-7-1990. He asserted that he had worked for more than 240 days in the Calendar year prior to his termination. His services were terminated in violation of the provisions of section 25F of the Act. i.e. without notices and without retrenchment compensation. He relied upon a document purporting to be a Certificate.

Junior Telecom Officer Ulhas Nagar and Telephone Exchange Kulgaon. The certificate was countersigned by Asstt. Engineer Cable, Ulhas Nagar. So far as this person is concerned he can be said to have worked for 240 days in the calendar year prior to his retrenchment. The certificate relied upon by shows that in the year 1990 he worked from 22-1-1990 till 01-7-1990. Even if we add all these days they are less than 240 days. The workmen admitted in cross-examination also that this document W-2 also shows that he had not worked for 240 days. Thus, he has no case whatsoever. Same is the case of Shantaram Ramchandra Ahire. The document W-8 relied by him also shows that between 01-1-1990 to 01-7-1990 the workman has not worked for 240 days in the previous calendar year. So far as Sadu Dama Dighe is concerned he says that he continuously worked from 01-1-1984 till 31-3-1986. His services were terminated from 01-4-1986. In his cross examination this witness stated that he had filed the document in support of affidavit signed by Junior Engineer Shahpur who had given the certificate. His name was one Mr. Saruke. He had verified the Statement made in the certificate from muster roll. The workman stated that he had applied for absorption as a permanent worker before the committee. But the committee had not done so. The workman denied that certificate was false or concocted. He also denied he was a party to previous reference made before CGIT No. 1. In support of his assertion that the certificate filed by him was given to him Dhundaram Saruke, Sadu Dame Right sum named the aforesaid Junior Engineer. Dhumium Sarke admitted his signature but he said that the certificate is not correct. He is disbelieved so far as this part of testimony is concerned. By his demenour and statement this witness appears to have spoken falsely with view to support his department. This tribunal, therefore, holds on the basis of evidence on record that S.D. Dighe was retrenched with effect from 01-4-1986 as he had already worked for more than 240 days in the calendar year immediately proceeding the order of dismissal. The certificate issued to him appears to be correct. This position appears to have been borne out by document W2 dated 26-3-1991. The document marked as Annexure II item No. 28 says that Sadu Dama Dighe had worked 385 days. There is nothing on record to suggest that the person was party to any proceedings in Ref. No. CGIT No. 1/93 of 1991. The case of Devarama Chima Bhakare is that he was appointed on 01-11-1986. He continuously worked till 01-10-1987. He was retrenched from service on that date. He alleged that he had already worked continuously for 240 day during the 12 months of the calendar year prior to his dismissal. He was not given any compensation or notice In cross-examination this witness stated that certificate he relied upon were issued by Mr. Bhat or Mr. Jadhav. However, Mr. Bhat was not shown the certificate. Mr. Jadhav was not examined. Moreover, the name of this workman appeared at item No. 18 in Annexure B to schedule of Reference No. CGIT No. 1/47 of 1994. The terms of reference indicated that the legality of termination of services of Devaram Chima Bhakre was under consideration in that reference. In view of the rejection of that reference by Award dated 29-7-2002, the question of re-opening of the case Devaram Chima Bhakre does not arise.

8. The result of the aforesaid discussion is that out of the four persons whose case was pressed on behalf of the Union only one person i.e. Sadu Dama Dighe is entitled to relief. The other three persons mentioned in paragraph 2 of this award is not entitled to any relief. As already stated that the case of rest of the workmen was given up. However, nothing said here shall affect the other workmen who have been voluntarily and amicably absorbed or reinstated by the Telecom Department.

9. This tribunal concludes that Sadu Dama Dighe was retrenched. The question is to what relief he is entitled? He is entitled to reinstatement. The next question is if he is entitled to back wages. There was no evidence lead by the workman that he was not gainfully employed. Considerable time has elapsed since the order of dismissal was passed. Under the facts and circumstances given, the workman is being reinstated without back wages. The claim of rest of three workmen is not accepted. So far as other workmen apart from the four workmen, whose case has been adjudicated upon, is concerned no order is made. The next question is what further relief can be granted to Sadu Dama Dighe. He was a casual worker. Persons, like him, who had worked for more than 240 days were absorbed as permanent worker by the Telecom Department. The award dated 6-10-1995 granted the relief of regularization to 17 workmen in view of Departmental policy. Following that award Reference CGIT No. 2/69/1995 which is binding on the parties, it is further directed that Sadu Dama Dighe shall be absorbed as a permanent workman.

10. Accordingly, this reference is answered by saying that Sadu Dama Dighe only is entitled to relief of reinstatement and absorption as a permanent labour with the Telecom Deptt., Kalyan. The claim of othere three persons i.e. Kashi Ram Ramchandra More, Shantaram Raghu Ahire, and Devram Chimaji Bhakre is not liable to be accepted. No adjudication is made on the claims of rest of the workers as they were not pressed before this tribunal.

S.C. PANDEY, Presiding Officer

नई दिल्ली, 12 मई, 2003

का. आ. 1535.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एअर इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में न्यायमूर्ति श्री एच. सुरेश (रिटायर्ड), एकमात्र विवाचक, के पंचाट [संदर्भ संख्या एल-11012/9/2002-आई. आर. (सी-1)] को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-04-2003 को प्राप्त हुआ था।

[सं. एल-11012/9/2002-आई. आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 12th May, 2003

S.O. 1535.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref. No. L-11012/9/2002-IR (C-1)] dt. 1-4-2002 of Justice Sh. H. Suresh (Retd.), Sole Arbitrator, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Air India and their workmen, which was received by the Central Government on 25-04-2003.

[No. L-11012/9/2002/IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE HON'BLE SHRI JUSTICE H. SURESH (RETD.) ARBITRATION BETWEEN

AIR INDIA AIRCRAFT ENGINEERS ASSOCIATION

AND

AIR INDIA LTD.

APPEARANCES:

Mr. J. G. Gadkari, Advocate

Mr. H. K. Rout, President

Mr. V. Samarasan, General Secy.

Mr. S. S. Quazi, Jt. Secretary

Mr. C. G. Panchal,

Mr. S. S. Gill & Others.

For the Air India Aircraft Engineers Assn.

Mr. S. K. Talsania

Mr. M. V. Kini

Mr. J. S. Saluja

Mr. A. R. Chaphekar—Advocates.

Mr. S. A. Deshmukh—G. M. Engg. (OC & TS)

Mr. A. K. Sheode—Addl. GM Engg. (OC & TS)

Mr. S. V. Joglekar—Addl. GM Engg.

Mr. V. Kulkami.

Mr. Unni Krishnan.

Mr. V. A. Ferreira-G.M. (HRD), for Air India Limited.

AWARD

This dispute came to be referred to me under the following circumstances :—

I. The Air India Aircraft Engineers Association (hereinafter referred to as "Association") represents Aircraft Engineers employed in Air India in the categories of Assistant Aircraft Engineers, Aircraft Engineers, Senior Aircraft Engineers, and Dy. Chief Aircraft Engineers, The Air India has been referred as "Management" hereinafter.

II. It appears that the Association has raised various issues relating to breach of the agreements, settlements, understandings and practices and according to them the Management was delaying in settling those issues. Thereupon the Association gave a strike notice. The Management went to the Bombay City Civil Court for an Order of Injunction against the Association, restraining them from going on strike. However, the Bombay City Civil Court, by its order dated 21st November, 2001 held that it had no jurisdiction to entertain and try the suit. Against the said Order, the Management filed an Appeal, being A.O. No. 1041 of 2001, in the High Court at Bombay. During the course of hearing the Learned Judge suggested that the dispute be referred to Arbitration under Section 10A of the Industrial Disputes Act, 1947. The parties finally agreed and drew up Minutes of the Order dated 25th February, 2002 and the Hon'ble Court passed the Order in terms of the said minutes.

III. It was agreed before the Ld. Judge that the parties should try to have an agreed terms of reference. However, in the event that there is any disagreement between the parties about the language to be used while framing the terms of reference, on a particular clause, it was agreed that the respective terms of reference proposed by both the parties shall be referred to arbitration so that the Ld. Arbitrator can decide upon the entitlement of the Association in respect of the demands which has been made before the Management.

IV. In the Minutes it was agreed to refer all the disputes raised in strike notice dated

15th February, 2002 and all the disputes raised in strike notice dated 28th July, 2001 as well as all disputes pending in conciliation before the Regional Labour Commissioner(E), Mumbai. It is also mentioned that if both parties jointly agree, they could refer all such additional disputes also.

V. Admittedly, the parties could not agree on the language of the terms of reference before Form 'C' (as per the Rule 7 u/s. 10-A Industrial Disputes Act) was filled up. Accordingly each party prepared its own terms of reference, and while filling up the said form, the disputes were referred to as shown in Annexure 'A' and 'A-1', the former being that of the Association and the Letter of the Management. My consent was obtained on 11th March, 2002, and they were all forwarded to the Government of India. The Government of India by its letter dated 1st April, 2002 duly approved the agreement and referred the said Industrial Dispute to me. Upon receipt of the said Notification, by my letter dated 18th April, 2002, called upon the parties to appear before me on 30th April, 2002 for the purpose of giving directions.

VI. Thereafter, pursuant to the directions given, parties filed their respective statements in support of their Terms of Reference and also by way of reply to those Statements. Thereafter several meetings were held. On behalf of the Association, H.K. Rout, the President of the Association and one K. Chandrashekhar were orally examined and they were cross-examined by the Managements Advocate Mr. S. K. Talsania. On behalf of the Management Mr. S. A. Deshmukh, Mr. A. V. Kulkarni, Mr. K. Unnikrishnan and Mr. V. A. Ferreira were all orally examined, and they were all duly cross-examined. Thereafter the Advocates on either side made their submissions. Thus all the submissions on either side were all completed on 31st January, 2003.

VII. After considering all the documents, statements, and the evidence led on both sides, and after taking into account the oral submissions made by their respective Advocates, I do hereby propose to make the Award as under. I further say that from time to time, the parties have given their written consent, for extension of time, the last extension being upto 15th April, 2003, this Award is made in time.

I. **Item No. 1 :**

(a) Whether the workmen (Aircraft Engineers) are entitled to PLI payment for extra sector flights during the following periods as per the terms of MoS of 1996 ?

	Grounded Period	Aircraft Registration	PLI
1.	22-09-96 to 01-10-96	VT-EGB	Not Paid
2.	22-10-96 to 31-10-96	VT-EGB	Not Paid
3.	07-11-96 to 13-11-96	VT-EGB	Not Paid
4.	27-09-97 to 01-10-97	VT-EGA	Not Paid
5.	13-10-97 to 19-10-97	VT-EGA	Not Paid
6.	27-10-97 to 01-11-97	VT-EGA	Not Paid

(b) Whether the Air India Management had already decided to pay the said arrears after the mutual consultation with the office bearers of the Association and the payment was only subject to the approval of the Board of Directors ?

(c) If so, whether they are entitled to receive interest on the said payments (Arrears) and if so, at what rate ?

1.1. There is an agreement dated 2nd/3rd May, 1996, which is Document No. 1 in the file of documents filed by the Association. In that, there is a scheme for payment of Productivity Linked Incentive (hereinafter referred to as "PLI"). Annexure 'C' to that document sets out the terms of settlement, regarding 'Revised Productivity/Work Practices'. Annexure 'D', provides for the 'Amount Payable under PLI'. In the first page of the said Annexure, the Amount payable to different categories of Air Craft Engineers is set out. That appears to be the earmarked amount under PLI for each category of Engineers. In the following pages the methodology for payment of PLI has been set out. The relevant portion thereof is as follows :—

"METHODOLOGY FOR PAYMENT

Payment under this scheme will be linked to the performance measured using parameters such as Despatch Reliability and Aircraft Availability. Total amount under this scheme will be divided as per following proportion :—

(1) DESPATCH RELIABILITY—35% and

(2) AIRCRAFT AVAILABILITY—65%

Based on the performance in a given period, suitable payment will be made retails of measurement of performance is given hereunder."

1.2. It is not necessary for me to set out the Modalities and the norms for determining Despatch Reliability, as there is no dispute concerning the same.

The dispute is with regard to "Aircraft Availability" (hereinafter referred to "AA"). The relevant portion, in that behalf is as follows :

"AIRCRAFT AVAILABILITY :

AMOUNT : 65% of the total amount earmarked for PLI will be paid under this head modalities;

Payment under this head will be related to the Aircraft Availability (AA) of entire fleet considering number of aircraft available i.e. number of aircraft in the fleet less aircraft grounded for Major Checks. Present interval of these checks are given below :

1. BOEING 747–200.

   'P' CHECK 4800 Hrs.

   CHECK 'A' 1100 Hrs./1300 Hrs. (180 days).

2. BOEING 747–300 (COMBI)

   'P' CHECK 3600 Hrs.

   '4A' CHECK 1200 Hrs./150 days.

3. BOEING 747–400

   CHECK 'C' 5000 Hrs./15 Months.

   '4A' CHECK 2000 Hrs./250 Days.

4. A300B4

   'P' CHECK 4000 Hrs.

   CHECK 'A' 500 Hrs./80 days

5. A310-304

   'P' CHECK 3600 Hrs.

   CHECK 'A' 450 Hrs./70 days.

BASE LEVEL AA=18 when 67% payment will be made.

Below AA=18

Reduction in payment from Base level by 17%– for reduction of every 0.25 aircraft.

Below 17 aircraft available. Nil payment.

Above AA 18

Increase in payment by 3.3% for increased availability of every 0.25 aircraft.

At, AA=20.5, payment=100%.

Above AA=20.5–

Increase in payment by 5% for increased availability of every 0.25 aircraft.

Above AA=21–

Increase in payment by 7.5%–for increased availability of every 0.25 aircraft.

EXAMPLE

Assuming, Avg. increase in salary of DYCAE

= Rs. 40,000 p.m.

Payment under this head i.e. 65%

= Rs. 26,000 p.m.

BASE LEVEL AA = 18 Payment = 67 %

= Rs. 17,420/-.

Below AA = 18-

Increase in payment from base level by Rs. 4420/- for reduction of every 0.25 aircraft.

Below AA = 17 Nil payment.

Above AA = 18-

Increase in payment by Rs. 858/- for increase of every 0.25 aircraft.

At AA = 20.5, payment = Rs. 26000/-,

Above AA = 20.5

Increase in payment by Rs. 1300/- for increase of every 0.25 aircraft.

Above AA = 21-

Increase in Payment by Rs. 1950/- for increased availability of every 0.25 aircraft.

Note 1. Aircraft which are sent aboard for major checks due NON PERFORMANCE OF AIRCRAFT ENGINEERINGS will not be considered "available for payment of PLI" until their next major check, carried out in — house.

2. These norms will be reviewed based on induction/phase out of aircraft from time to time."

1.3. The grievance of the Association is that in respect of certain Extra-Section Flights which are grounded as shown in the tabulated column under Item No. (a), their members have not been paid. Under Item No. 1(b), the Association contends that the Management had decided to pay the said arrears and the payment was subject to the approval of the Board of Directors. The Management has disputed this and in any event, it is not necessary for me to go into this question, inasmuch as the Management has not given the amount. The Association has also made it clear that the claim is under Document No. 1 and not under any proposal as may be found in any other document (such as the letter dated 7th December, 2000 being Association's Doc. No. 4).

1.4. Mr. Gadkari has stated that the tabulated column shows 9 flights out of which he would not press Serial Nos. 7 & 8. However he adds two more Extra Section flights (which he adds in paragraph 14 of Association's Reply to Air India's Statement of Claim) in respect of which they have not been paid PLI for grounding. Thus the total number remains the same, though the period differs.

1.5. The relevant provisions relating to grounding of Extra-Section Flights is in Clause 4 of Annexure 'C' to Document No. 1, the Agreement : It is as follows :—

> **"Extra-Section Flights :** It is agreed that whenever there is a grounding due to extra section operations, it will be deemed that the aircraft is available for at least three months, including the month in whcih the grounding of the such aircraft has taken place."

The Extra-Section Flights are those flights which are applicable for the services to V.V.I.Ps. which normally consists of Prime Minister, President of India etc. There is no dispute that whatever PLI was paid for grounding Extra-Section Flights, that was on the basis of the above clause in the Agreement. It appears that in an Extra-Section Flight, the entire aircraft is changed whereby the normal seating arrangements is removed and are replaced with cabins and briefings rooms—what they call it Cabin Configuration. Further the aircraft undergoes a complete and thorough check. It is clear from the record that during the period when an Extra-Section Flight is grounded, it is not that only cabin configuration was required to be done, but all that are required including all the checks are carried out.

1.6. In my view, PLI is not given on the basis of any particular work done on any particular aircraft. It is clear from Clause 1 of Annexure C, the AMEs have to carry out all reasonable and lawful instructions given by the Management and they have to perform all jobs incidental/ related to their agreed duties as assigned by the Superiors. Therefore there is no question of the Association claiming any PLI payment on the basis of the work done on any aircraft or on any aircraft in any Extra-Section Flight.

1.7. The question is how would one co-relate grounding of Extra-Section Flights with the scheme for payment of PLI. For this one has to understand, how PLI scheme was formulated. Firstly, they earmarked the Amounts payable under the PLI. The next question was how to apportion the amount so ear-marked. for this they fixed the two criteria : i.e. (i) Despatch Reliability—35% and (ii) Aircraft Availability—65%. In other words the amounts ear-marked for each category of Engineers will be proportionately paid on the basis of those two criteria. It appears that PLI Scheme has been worked out on the basis of the existing 26 Aircrafts.

1.8. As regards Despatch Reliability, it depends upon how and to what extent, delay would occur and for what reason. A base level has been fixed and if it goes below a certain percentage of Base Level there would be no payment on account of Despatch Reliability. Certain kinds of Engineering Delays have also been excluded for the purpose of determining the percentage of Despatch Reliability.

1.9. So also on the other criteria of Aircraft Availability, 65% of the total amount ear-marked for PLI will be paid under this heading. For the purpose of calculating the availability of Aircrafts, it is stated that Aircraft grounded for major checks are not to be included. It is also stated that the aircrafts available goes below 17 there will be no PLI payment. The duration of various major checks when grounded have also been mentioned. Therefore, those aircrafts which are grounded for major-checks are not available for the period when they are under various checks. In other words, they are available for checks in the hangars or wherever they are to be checked, but they are not available for service. PLI payment depends upon the Aircrafts being available for service.

1.10. What happens when an aircraft is taken over for Extra-Section flight ? It is not available for commercial service. What happens when such an aircraft is grounded ? Since it is not available for commercial service, it could be considered as an aircraft which is not available for the purpose of PLI. However, under the agreement, the parties have made an exception. They have agreed that "it will be deemed that the aircraft is available for at least three months including the month in which the grounding of such aircraft has taken place". Therefore, the said air-craft is deemed as available for a period of three months for the purpose of considering the Aircraft Availability for payment of PLI. It has nothing to do with the work that is done or not done on any particular air-craft. The period starts from the month and including the month in which it is grounded till three months.

1.11. Again, I make it clear that, having regard to the wording of Clause No. 4 in Annexure 'C', each time a grounding of Extra-Section Flight takes place the time begins to run for three months as provided therein for the purpose of considering the Availability of Aircraft for calculating PLI. It is in that sense, it is not necessary that after such an aircraft is grounded it must necessarily go for a commercial flights. It may go for any flight, but it is treated as available for three months, for the purpose of calculating the PLI. It is possible that after some days or may be after a month or two (may be within the same period of deemed three months) it is grounded as an Extra-Section Flight, the time again begins to run from that month for three months as provided therein. Similarly it may be continuously grounded for more than three months, and in that event, on the expiry of three months, it is to be treated as not available for the purpose of calculating PLI.

1.12. I, therefore, do not agree with the contentions of Mr. Gadkari. So also I do not fully agree with the interpretation put forward by Mr. Talsania for the Management. Having regard to the true meaning of the scheme as analyzed by me, the Association's claim under Item Nos. I(a), (b) and (c) will have to be negatived, and accordingly they are rejected. This also covers Management's Terms of Reference No.1(a) and 1(b). Consequently, Managements' Terms of Reference 1(e) and I(f) do not survive. In view of the above discussion the

Management's Terms of Reference 1(c) and 1(d) also need not be answered, inasmuch as the Association has maintained that claim was under the Agreement (Document No. 1), and not under the letter dated 7th December, 2000 (Document No. 4).

2. **Item No. 2 :**

(a) Whether the existing agreement on PLI dated 2/3 of May 1996 was required to be reviewed and amended as per the terms of the said settlement on account of introduction of additional aircraft ?

(b) If so, whether the workmen are entitled to interest on arrears of payment from the date of introduction of additional aircrafts till payment ?

As stated above, PLI scheme was worked out on the basis of a fleet of 26 aircraft. Since than number of aircraft has gone upto 28. The Association demands that the agreement on PLI be reviewed and amended on account of introduction of additional aircraft.

2.1. The Association relies on the following which is a part of Annexure 'D': "These norms will be reviewed based on induction phase-out of aircraft from time to time". This is mentioned with regard to both criteria of Despatch Reliability and Aircraft Availability. It is clear from their Statement of Claim that what they want is review of these norms. I cannot understand how the Management can ever oppose this.

2.2 The Management relied on Clause No. 16 and Clause No. 13 of the Agreement dated 2/3rd May, 1996. They think that it is their prerogative to amend or modify as they think proper. I do not agree with this contention. Clause No 16 does not say that they can unilaterally amend the norms or the terms of the agreement. It presupposes that there could be changes in PLI scheme and in that event they have to give effect to such modifications. It only means that "norms" may have to be changed and if the changes are agreed the Management will have to give effect to the modified scheme. Similarly Clause No. 13 does not mean that the Association can never raise any fresh demands. Hence the Management's contention will stand rejected.

2.3 Mr. Gadkari has pointed out that the scheme is an open ended scheme and in particular he points out that under the criteria of AA if the total aircraft is above 21, there will be an increase in payment "by 7.5%—for increased availability of every 0.25 air-craft". In this connection they rely on Document No. 7 of the Association which shows that under the existing formula, with the increase in the aircrafts they would get less unless the management is prepared to consider that it is an open ended formula as contended by them.

2.4. In this connection, I must refer to the Management's Term of Reference No. 12. It is as follows :

"12. Whether the payment of PLI to the Aircraft Engineers as per the parameters prescribed in the Agreement dated May 2/3, 1996 without any capping or ceiling level is justified ? If so, whether the capping levels or ceiling prescribed by the Management for payment of PLI as stipulated in letter No. DHRD/37-PLI/064 dated January 21, 2002, are justified ?"

The Management says that PLI scheme can be reviewed and necessary amendments and modifications can be effected by the Management. According to the Management capping of the PLI scheme is within their sole discretion and is permissible as well as proper. I have no hesitation in rejecting this contention. Since it is an open ended scheme, it is not open to the Management to cap it as they like. Hence that term of reference by the Management will have to be negatived.

2.5. I am of the view that the Association is justified in demanding a review of the norms because of the induction of additional aircrafts. However, I myself will not be able to work-out any new formula.

It is, therefore, proper that I should direct the parties to sit together and review and arrive at a new norm, for which purpose I would prescribe a period of three months time from the date of this award comes into force.

2.6. I must also mention that the Association has been demanding the review since a long time and they have claimed their dues on such revision with retrospective effect and with interest. The fact that such review is called for is acknowledge in the Dy. M.D.'s letter dated 7th December, 2000 (Assn.'s Doc. No. 4) addressed to the M.D. and it also mentions that "a formula has been evolved after taking care of (this fact) and it has resulted in the need to pay some back payments for these additional aircraft when (our) actual fleet strength was 28". This letter is important to indicate that if the parties had agreed, perhaps, the revised formula would have come into force from 1st January, 2001. Unfortunately that was not pursued. Therefore, three questions arise: (a) Till such time they arrive at a revised norms or formula, what should be the payment of PLI? (b) If so, from what date the Management should be liable to pay? and (c) Whether the PLI should be paid with interest and at what rate ?

2.7. What is required is a just solution. I would consider that it is proper that till such time the parties arrive at an agreed formula, they should be paid under the existing formula, treating AA as open ended, and as worked out by the Association in their Document No. 7. The same should be payable with effect from 1st January, 2001, with interest thereon at the rate of 10% per annum. These payments are subject to adjustment on the new formula coming into force.

2.8. This also disposes of the Managements Terms of Reference 2(a), 2(b). What the Association demanded

was in effect, the revision of the norms and that is not a fresh demand and that the same is within the scope of the agreement Document No. 1. Therefore their reference bearing No. 2(b) is negatived. So also their Term of Reference No. 12 stands rejected. As regards their Reference 2(c) and 2(d), a just solution has been indicated as above, in answer to them. I cannot understand how the Management can take any such technical stand.

3. **Item No. 3**

(a) Whether the grade 34 should be created in view of the stagnation of many Sr. Dy. Chief Aircraft Engineers ?

(b) Whether the Air India Management had principally agreed to create such grade and had appointed a Committee under the Chairmanship of Mr. S. A. Deshmukh by letter dated April 6th 2001 only to workout the modalities ?

(c) If so, whether the Management is responsible for the delay in the creation of grade No. 34, if so, what relief the stagnated Aircraft Engineers are entitled to ?

3.1. The demand is to create Grade No. 34 in the workmen category. There is already Grade No. 34 in the Management Cadre.

The allegation is that in 1996 there was an agitation by Air-craft Engineers of Air India and to break the agitation the Management offered promotion to some selected persons to Grade No. 34 in the management cadre. This is denied by the Management and their version is that promotions were deliberately refused by the Aircraft Engineers, and now they have realized that some of the juniors have gone above the erstwhile seniors, and hence they demand the creation of this new category.

3.2 In the meanwhile by an Order dated 3rd April, 2001, a committee consisting of Mr. S.A. Deshmukh (G.M. Engineering) and others was formed to consider the question relating to creation of Grade No. 34 and to provide for promotion to that grade. That committee has made a report dated 16th April, 2002, and they have recommended that it would not be advisable to have any such grade. Mr. Gadkari submitted that one of the members of that committee has not signed the said report. In my view it may not be possible for me to recommend creation of such a grade as it has various other consequences. The Management has opposed and in my view rightly, that creation of such a Grade may have various other repercussion on the other categories of employees. They have also stated that the Pilots have also preferred demands on the Management for fixing the Co-Pilots at Grade No. 34. Therefore, creation of one Grade at one level leads to further problems. They have also stated that fixation of any Grade/s is the Management's prerogative and that cannot be done at the demand of the Union. I agree with these submissions.

3.3 Hence this claim will have to be rejected and the answer will be in the negative. This also disposes of the Terms of Reference raised by the management at Sr. No. 3(a), 3(b) and 3(c).

4. **Item No. 4:**

(a) Whether the Aircraft Engineers are entitled to get additional productivity compensation for undertaking non scheduled/outside party work during the period 1996 till today and in future as per the term of 2nd/3rd May, 1996 settlement Annexure 'C' paragraph No. 4.

(b) If so, whether they are entitled to get the interest over the due payment for such work done during the period mentioned above?

The Association's claim is for additional productivity compensation for doing the work on non scheduled Outside Party work. The Agreement dated 2nd/3rd May, 1996 at paragraph 4 of Annexure 'C' says as follows:—

> "Aircraft Engineers shall undertake Non-scheduled/ Outside Party work on aircraft and allied jobs in pursuance of the company's objective subject to capacity being available. This will be counted as additional productivity"

4.1 It is an admitted position that the PLI does not cover this Outside Party work. The Agreement also does not give any formula or scheme for compensation. According to the Association the Management has been orally promising from time to time that an appropriate scheme will be worked out. However, it has not done so far. The Association, however, says that this being additional productivity it is proper that they should expect some compensation for themselves. It appears that from time to time the Management earns revenue on account of Outside Party work. The suggestion is that at least 40% of that should be paid to the Aircraft Engineer's Work on the same basis as the PLI. It appears that the Association has written number of letters in this behalf and the Management has not given any reply nor has it given any counter proposal.

4.2 The Management points out that the Agreement dated 2nd/3rd May, 1996 was entered into for the purpose of introduction of the Performance/Productivity Links Incentive (PLI) scheme for which purpose the Aircraft Engineers have to fulfil the terms and conditions as mentioned in the Annexures 'C' and 'D' to the Agreement. It is pursuant to the basic agreement (being clause 7 of the Agreement), the Aircraft Engineers have undertaken to carry out Outside Party work, "subject to capacity available". This will be counted as additional productivity. It is, therefore, clear that PLI is not merely working on the Aircraft of Air India but also based on carrying out all the duties and obligations as mentioned in Annexure 'C' to the Agreement. Though norms have been prescribed on the basis of AA, the amount that is to be given all depends

on the work and on the basis of their obligations as mentioned under Annexure 'C'. For example under Clause 13 of Annexure 'C' to the Agreement, the Management will have the right to rationalize and introduce such measure so as to improve the work and standard of efficiency of work and to reduce cost and to step up productivity in the larger interest of the company.

4.3. Mr. Talsania has pointed out that under Clause 13 of the main agreement, the association has agreed that in respect of the matters specifically covered in the Statement of Claim, they will not make fresh demands involving additional liability.

4.5. In my view it is true that the work of Outside Party is an item of additional productivity but the agreement does not provide for any additional payment. So what the Association is demanding is really a new right which has financial liability though, within the scope of the said agreement, which has been specifically covered under Clause 13 of the agreement. Mr. Gadkari submitted that on the basis of profit made by the Management some percentage of that income should be ear-marked to the Association. I am not impressed by this submission of Mr. Gadkari. Hence this claim will also have to be rejected. This also disposes off the Management's Terms of Reference bearing Nos. 4(a), 4(b), 4(c) and 4(d).

5. **Item No. 5:**

(a) Whether the workmen are entitled to get additional productivity compensation for carrying out the periodic check of A-300 B4 aircraft in house which was earlier done by foreign party?

(b) If so, what amount of compensation should be paid from the time periodic checks started in Air India for A300-B4?

5.1. It is the case of the Association that the major Checks of aircraft's A300-B4 were initially carried out by Indian Airlines i.e. by payment to Indian Airlines. Subsequently, due to inability shown by Indian Airlines for doing major Checks of A300-B4 aircraft, the Management sent the aircrafts to foreign airlines for the major checks as there was no infrastructure and manpower available to do work in house. This entailed the payment of a huge amount in foreign currency to foreign parties. At the time of signing of the 1996 Agreement, the aircrafts' major Check was not carried out in house. However, since about 1997, the Association's members have undertaken this job and have been performing the same without being required to send the said aircrafts abroad.

5.2. The Association now demands extra compensation for doing this major Checks on the aircrafts.

5.3. In this connection the Association relies on the letter dated 7th December, 2000 (being Document No.4) of the Association. In the said letter dated 7th December, 2000, the Dy. Managing Director has stated that regarding the starting of the major Check of A300-B4 aircraft it has been agreed between the parties that some payment will be made for the first cycle of 'C' Check. This is due to the fact that initially considerable additional effort was required to be made to carry out the major Checks on A300-B4 aircraft, which were till then made by Indian Airlines or foreign agencies. However, payments for checks subsequent to for check 'C' will not be made as by that time the system and infrastructure have already been put in place for this additional work. It appears that the Association has agreed to this proposal. The association has calculated that the payment for the first cycle of 'C' check for the A300-B4 aircraft amounts to 142 days of PLI on the basis of grounding chart for 'C' Check of Airbus B4 aircraft and the same has been shown in a chart submitted to the Arbitrator.

5.4. The Management on the other hand points out that the Agreement already includes this aircraft for 'P' Check and also Check 'A'. They also say that these works of aircraft were existing before the signing of the Agreement 1996. They have also relied on Clause 13 of the Agreement which says that all the demands as raised in the Charter of demands have been fully settled by this settlement and that the Association agrees that no fresh demands involving financial liability will be raised in respect of any other matters specifically covered by this settlement during the validity of this settlement.

5.5. In my view that PLI payment is based on AA. Since this aircraft is already existing I could presume that this aircraft was available for the purpose of payment of PLI. The Agreement further says that if any aircraft is grounded for major checks the same will not be considered as an aircraft available. The agreement then provides for "the various intervals" of these Checks. As regards A300-B4, the interval contemplated was for 'P' Check 4000 hours and check 'A'500 hours / 80 days. I, therefore, cannot understand how the Association can raise any separate demand for calculating for Checks 'C' of this Aircraft when it is not provided in the Agreement. In any event the aircraft were available at the time of signing of the agreement and all aspects relating to PLI had been covered under the Agreement. In fact they are asking for additional compensation on the basis that they should be assigned 'C' Checks work of this aircraft and on the basis of which they should be paid extra compensation. If that is their argument then again it will be out side the scope of the agreement. In any event if the Association thinks that 'C' Checks of these aircraft do not fall within the scope of this agreement there is no obligation for them to carry out the said Check. Either way the claim appears to be not maintainable. Hence I reject this claim. This also disposes off the Management's Terms of Reference bearing Nos.5(a), 5(b) and 5(c).

6. Terms of Reference:

Whether the following action of Management amount to violation of Agreement/Understanding/ Awards?

(a) Non payment of PLI for the following period:

Aircraft	Period
12.08.01 to 10.09.01	VT-ESO
13.09.01 to 09.10.01	VT-ESM
06.12.01 to 03.01.02	VT-ESN.

(b) If the Air India Management desires to make any alterations in the Settlements and/or Understanding, norms, reflected in the Maintenance System Manual, Quality Control Manual, and/or, the correspondence or otherwise change the established practices in respect of the service conditions. The same should not be done without consultation of the Association and without giving notice of change.

6.1. According to the Association the aircrafts referred to above were available within the meaning of AA but the concerned workmen have not been paid PLI. The Management points out that during the relevant period the aircrafts required strut modification as per the requirement of DGCA. Hence the aircrafts were sent to Taiwan and therefore, the workmen have not performed any such work. They further state that even in the Agreement of 1996, there is no provision for the payment for strut modification carried out abroad.

6.2. The Management's case is that certain Checks were done on the aircrafts but the workmen refused to do the work of strut modification. The Management further contends that there was some correspondence in this behalf and the workmen demanded extra payment for the work of strut modification.

6.3. The fact remains that these aircrafts had in fact been sent abroad for the work of strut modification. They were sent after carrying out certain major Checks. The Association denies that they refused to carry out the work of strut modification. Therefore, they say that the aircrafts should be considered as available for the purpose of PLI. Under the Agreement there is a note under Annexure 'D', it says that the aircrafts which are sent abroad for major Checks due to non-performance of aircrafts engineers will not be considered as available for payment of PLI until their major Checks are carried out in house.

6.4. In my view the evidence shows that the Engineers carried out Checks 'C' which is one of the major Checks. However, these aircrafts had to be sent for strut modification as per the requirements of DGCA and they were sent abroad. The strut modification is a major Check. However, it is clear that the aircrafts engineers had not carried out the work of strut modification, for whatever reasons that could be. If they have not performed the work of strut modification and the aircraft had to be sent abroad, it is proper for me to hold that it has nothing to do with PLI. In the view that I have taken, this claim is also to be rejected. This also disposes off the Management's Terms of Reference bearing Nos. 6(a), 6(b) and 6(c).

7. **Item Nos. 7 & 8**

7(a) The norms detailed by the National Safety Council its "Aviation Ground Operations Safety Hand Book" publication on safety of equipment, hangar, shops should be observed to make the working conditions safe.

7(b) The Air India Management should also observe the Ramp safety requirements for personnel contained in the Airport Authority's Manuals.

7(c) Engineer run up area should be made available as per the requirement of Airport manuals.

And

8(a) Whether the Rest Rooms provided to Aircraft Engineers are furnished and maintained to the required standard.

8(b) Whether health, safety and welfare aspects are up to the required standards that are provided by Air India management to Aircraft Engineers (workmen) and maintained.

7.1. Both these items can be disposed of together. The Association states that the manufacturers have laid down various guide lines for the safety of the workmen. Their grievance is that the management is not following these guidelines. They rely on Aviation Ground operation safety Handbook (being Association's Document No. 13). That handbook sets out various safety guide lines.

7.2. The management says that they are following the norms laid down in the Factories Act, and that the Factory Inspector inspects the premises from time to time and as and when any short comings are pointed out, they are attended to. They submit that they are acting in accordance with law.

7.3. Under Item No 8, the Association points out that the facilities given in the Rest Rooms are old and that the toilets are not kept clean and many welfare requirements are not provided for, for the members of the Association The managements' answer is that they are complying with the requirements of the Factories Act, 1948.

7.4. This requires no elaborate consideration. I would direct the management to comply with the requirements of the Hand book (Document No. 13) to the extent possible and also take all steps for maintaining the Rest Rooms and also to see the toilets and the areas of work and rest are maintained in clean and hygienic

conditions. For the purpose of carrying out the directions given here, I suggest that the Management should constitute a small committee of two members from each side which will supervise the above work from time to time. This, of course, is in addition to the requirements of the Factories Act, 1948. This also disposes of the management's Terms of Reference, Item Nos 7(a), 7(b), 7(c), 8(a) and 8(b).

8. Item No.9:

(a) Whether the Aircraft Engineers who have obtained qualification for Inspection / Certification of 747-400 and its equipments after 1997 are entitled to certification allowance as per the settlement dated 1994 as being paid to similarly qualified person prior to 1997?

(b) If so, whether they are entitled to the interest on the amount remaining unpaid and at what rate?

8.1. The claim under this item is for certification allownace for certification of B-747-400 aircrafts. There is an Agreement dated 6th September, 1993 (being Association's Document No. 9) and the claim is made in terms of this Agreement.

8.2. There is an earlier Agreement dated 6th April, 1989 (being Association's Document No. 12), that Agreement, inter alia, provided for qualification pay. It is the case of the association that qualification pay has nothing to do with certification allowance.

8.3. It appears that the management did not have aircrafts B-747-400 prior to 1993. So when this aircraft was introduced it became necessary to train the Engineers for being qualified for this aircraft. Earlier the scheme was for the qualification aircrafts B-747-400/300, A-300-B4.

8.4. Association's Document No.9 which is the agreement, deals with certification allowance for being qualified for B-747-400. The Agreement itself spells out the entitlement for the certification allowance, which is as follows:—

"3(C)(i) With reference to Clause No II. (6) of the Record Note dated September 04, 1992 on the subject of Training Norms for B747-400 aircraft, the Annexure-II of the Settlement dated 06-04-1989 which has been amended as Appendix 'A' now shall be read as Annexure-II (A) and shall presently be used only for the purpose of Promotion/Placement.

(ii) With reference to Clause No.III(3) of Record Note dated September 04,1992 of Engineering Department and Clause No. VII of Record note dated August 23. 1993 of Engine Overhaul Department on the subject of Training Norms for B747-400 aircraft. Annexure-III of the Settlement dated 06-04-1989 shall be amended to read as Annexure-III(A) after the completion of Re-grouping of Shop Approvals and shall presently be used only for the purpose of Promotion/ Placement.

(iii) The Settlement dated 06-04-1989 shall continue to be used for the existing Qualification / Productivity Scheme entitlement.

(iv) Qualifications on B747-400 Aircraft/Engine/ Components will be considered for the purpose of Promotion/Placement and B747-400 Certification Allowance. It will not be considered for entitlement under the existing qualification/ Productivity Pay Scheme dated April 6, 1989."

It also defines as to what is meant by qualification under Clause 3(e), which is as follows :—

"3(e) Definitions:-

(a) Qualification means Licence/Permit/Authorisation Approval including restricted/Provisional approval.

8.5. It is also an agreed position that the management shall endeavour to train all aircrafts' Engineers who are eligible for B-747-400 within 2 years from the date of the induction of these aircrafts into Air India. It is also agreed in this Agreement that all payments arising out of this settlement shall be effective from 1st August, 1993.

8.6. The Association says that the management has paid certification allowance to all those who were qualified till May, 1996. However, thereafter they have stopped paying certification allowance to number of Engineers who are qualified as per the qualification required under the Agreement for the aircrafts B-747-400. They have given a list of Engineers who have not been paid certification allowance. The said list is Document No. 10 of the Association.

8.7. The management's contention is that there was a regrouping of the Engineers which was agreed upon by the Association and that finds approval in a record-note signed in February, 1998 by both the parties. It appears that earlier there were 6 groups, but now there are 11 groups. They say that some of the aircraft Engineers may have thier requisite qualification on B-747-200, 300 or B300 B4 or A310, they may, incidentally, have endorsement for B-747-400 aircrafts for those components which are common to these aircrafts. Therefore, they would only get qualification pay. It is only those Engineers who have the qualification exclusively and specifically for B-747-400 would be entitled to get certification allowance, and they say that they have paid certification allowance as per this regrouping. They also contend that the aircrafts Engineers are not entitled to qualification pay as also certification allowance. They have also pointed out that from the list of Engineers who have not been paid certification allowance as indicated in Document No. 10 of the Association, some of the Engineers have been paid certification allowance, even after May, 1996.

8.8. On the other hand the contention of the Association is that the record-note has nothing to do with the qualification of aircrafts Engineers' being eligible or ineligible for certification allowance. They contend that the record-note does not disentitle any one for the certification allowance.

8.9. The evidence shows that even after the record-note, February, 1998 some of the Engineers received both qualification pay and certification allowance. The management now contends that this is an error and they may have to recall that qualification pay or certification allowance as the case may be. Mr. Talsania submitted that certification allowance is paid for those who have undergone training as per the Agreement being Document No.9 of the Association. In fact, the Association also claims the certification allowance as per the said Agreement and not otherwise. That Agreement provides for qualification, which means license/permit/authorization/approval including restricted / provisional approvals in their approval book or authorized for working on B-747-400 aircrafts / Engine/components.

8.10. In my view the Agreement being Document No.9 of the Association is clear and all those Engineers who have the qualification of B-747-400 as provided under the Agreement are entitled for the certification allowance. It is possible having regard to the earlier document being Document No. 12 of the Association and the present Agreement being Document No.9, in the case of certain Engineers they could be getting both qualification pay and certification allowance. It is not proper to confuse the two or to consider that the certification allowance will be given to only those who are trained exclusively on B-747-400. I also agree with the contention of the Association that whatever be the reasons for regrouping the Engineers, it cannot take away their entitlement as provided under the said Agreement, (being Association Documents No.9).

8.11. I also agree with the contention of the Association that the record note is only for permission and placement and not for certification allowance.

8.12. In the result I answer this item in favour of the Association and accordingly the management's Terms of References under Item No. 9(a), 9(b) and 9(c) will have to be negatived. Consequently I would direct the management to pay all the amounts due under the heading certification allowance from the date the Engineers have not been paid till the payment and continue to pay as provided under the said Agreement being Document No. 9 of the Association.

8.13 As regards the claim of interest I am inclined to hold that the Engineers are entitled to interest as the same has been withheld after May, 1996 without any justification. I would, therefore, direct the management to pay such amount together with interest thereon @ 10% per annum from the date the amount was due till payment.

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9. **Item No. 10:**

Whether the Office Bearers of the Association are entitled to travel on confirm ticket on club class as per the bilateral agreement of 1989 and the practice observed for over 15 years?

9.1. It appears that since long time the Office Bearers of the Association were given confirmed ticket of club class for the purpose of attending seminar/meetings/ conferences. This was put on record in the Agreement dated 6th April, 1989 being Document No. 12 of the Association. The Association wants the earlier practice agreed in terms of Agreement being Document No. 12 should be taken so as to get all the facility.

9.2 On the other hand the management says that under the Agreement they are only entitled to certain facility and they will only comply with those requirements and they are not bound to adhere to practice. They submit that the passage cannot be claimed as a matter of right. They also rely on certain Passage Regulation and class of travel for the staff is given as per the said Passage Regulation.

9.3 Mr. Talsania, however, stated that the management would comply with the requirement of the Agreement being Document No. 12 of the Association.

9.4 I would not give any specific direction since the management is willing to comply with the terms of Agreement as also provided by passage regulation.

9.5 Accordingly this item would be disposed off as above. This also dispossess the management's Terms of Reference Nos. 10(a) to 10(e).

10. **Item No. 11:**

Whether the action of the management of granting approvals to Technical Officers in the matter of:

Defect Investigation; Recording; Analysis; Rectification; Log book certification; Calling out defect rectification; Preparation of documents; MEL/CDL; Maintenance of test equipment; Preparation of procedure/ process sheets—which are the job function and duties and responsibility of Aircraft Engineers according to rules and regulation and bilateral agreements and practice, legal? Just? Proper?

10.1 There is an agreement dated 14th October, 1965 (Association Document No. 14) which prescribes, inter alia, prevalent duties and responsibilities of Assistant Superintendent—Maintenance Division. It further says that in the event of these duties, responsibilities and practices being required to be amended, altered and/or revised to meet statutory requirements, organizational exigencies or for maintenance of uniformity in duties/ responsibilities, the All India Aircraft Engineers' Association be consulted prior to effect being given to such amendments, alterations and/or revisions. There is also a Maintenance System Manual Part–I (Association's

Document No. 22) which also mentions various responsibilities of AME's (Holding Licenses/ Authorisation/Approvals/Certificate of competency). In particular the Association points out that under para 4, it is the responsibility of AMEs to do the work of investigation, trouble shooting, analysis and rectification of defects reported in flight, those defected on inspection, repeat snags and certification thereof, signing the Routine Completion Certificate falling within the scope." So also in overhaul shops (Holding Approvals/Certificate of Competency) the AMEs have the responsibility, inter alia (as stated in para 5) of doing "investigation, analysis and rectification of all recorded, observed and repeat defects in the assigned areas of work". The Manual sets out in detail various other responsibilities and standards. It appears that the Management issued a circular dated 19th October, 2001 (Association Document No. 17) to the effect that Mr. A.V. Kulkarni, Additional G.M. Engineering Technical Services has been approved as Senior Technical Officer by DAW vide DGCA office Order dated 18/19th September, 2001. The said circular also shows that some other executives also have been approved by the Additional G.M. for the purpose of Delays/Defects/incidents. The Association contends that these approvals are illegal and improper, being in violation of 1965 agreement and the manual referred to above.

10.2. The Association contends that Mr. A.V. Kulkarni does not have the requisite qualifications. They also submit that these approvals given to Technical Officers cadre result in change in the condition of service of Aircraft Engineers and pose a great danger to the safety of public transport air-craft and passengers. They also contend that Aircraft Engineers have been working under Executive from Licence/Approved category in the Quality Control Stream, both having theoretical qualifications and practical experience of Aircraft Maintenance overhaul. However, with the approval these Technical Officers of the Technical Services stream who have neither theoretical qualifications nor practical experience, Aircraft Engineers will also be subject to these officers. They describe this as a parallel system to which they are objecting.

10.3. It appears that in the Air India's Engineering set up, there are two separate streams–the Quality Control and the Technical Support Services. The Air-craft Engineers come under Quality Control whereas the Technical Officers come under Technical Services. They also point out that all the work which Mr. Kulkarni is supposed to do, the AMEs are doing in accordance with the Manual referred to above.

10.4. The Management's main contention is that the approval was granted by DGCA and hence cannot be a subject matter of discussion with the Association. They assert that Mr. Kulkarni has the necessary qualifications. They deny that this amounts to any change in the conditions of service. They say that the duty performed is distinct and separate. They say that there is no overlapping of the responsibilities. According to them, though the functions and responsibilities as stated in MSM are carried out by the Aircrafts Maintenance Engineers, the technical executives have also been involved in carrying out those functions.

10.5. The question of DGCA approval have been specifically raised by the Management in the terms of References 14(a), 14(b) and 14(c). Their main contention that the Association is not entitled to raise any dispute or demand relating to the issues which are covered by the DGCA Rules and Regulations. In this regard they have relied on the Agreement dated 2/3rd May, 1996 being Document No. 1 of the Association. Under Clause 3 of Annexure 'C' of the said Document it is stated that the issues pertaining to the rights of the DGCA will not be any subject of the dispute. Hence they contend that it is not open to the Association to raise any dispute in this behalf. They also contend that the Management has the right to rationalize and introduce such measure as they like, for improving the companies over all standard of efficiencies to reduce the costs, and step up productivity and according to them the provision given to the technical officers have with the said clause. They also rely on Clause No. 17, which says that job functions of Aircrafts Engineers and officers will be made inter changeable.

10.6. The evidence of Mr. H.K. Rout, who is the President of the Association shows that the Technical Officers only collect and prepare a statistical data on the basis of the reports and help the Quality Control Manager by providing the said data to him. He has asserted that the technical officers do not carry out any investigation and that there is no case where the technical officers have suggested any remedial measure. He has also categorically stated that Mr. Kulkarni does not have requisite experience. By and large his evidence in this behalf goes unchallenged, excepting the fact that Mr. Kulkarni was granted approval for the first time in 1989.

10.7 Mr. S.A. Deshmukh, the General Manager, Engineering Air India has stated that on the insistence of DGCA it was decided to nominate the Senior Technical Officer for the granting of approval and that is how Mr. Kulkarni was approved after they were satisfied about his qualification. Mr. Deshmukh tried to point out that the work of technical officer is distinct and separate from that of the AME. However, he admitted that all these defects and investigation and analysis would be there in the record made by the AME and the Technical Officer and the QCM come to know of those defects and analysis through the record. Mr. Kulkarni himself has been examined. His evidence broadly indicates that he was associated with the work of aircrafts but he had never done the work of inspection of the aircrafts. He has also not done the work of defect isolation, rectification, modification, and

certification of aircrafts, systems and components. He has also not done the work of testing. He has done the work of correspondence with the manufacturers. All the knowledge that he has gathered about the defects were of from the reports made by AMEs.

10.8. The question is whether I can have jurisdiction to remove him from his present position. The other question is whether by appointing him as the Technical Officer, the service conditions of the AMEs were in any way affected. The responsibility and the work of the AMEs has been spelt out in the said Agreement being Document No. 14 of the Association and their work and responsibilities have also been set out in the manual being Document No. 22 of the Association and there is no evidence of these things having been changed. In other words service conditions and responsibilities continued as before, and in that sense it is not possible for me to hold that the appointment of Mr. Kulkarni as a Technical Officer, amounts to change in the service conditions of the AMEs. Hence the said Term of Reference will have to be answered in the negative.

10.9. I do understand the grievance of the Association. When the DGCA approval was sought for appointing Mr. Kulkarni as a Technical Officer for doing nothing but duplication of the work done by AMEs, the Management should have though of the consequences. I do not know whether such an appointment has resulted in any saving of costs or in any way helped in rationalizing or improvement in the standard of efficiency. All these are doubtful claims. I would only say that the management should seriously consider whether there should be any such cadre of technical officers for doing duplication of the work done by AMEs and I would leave it at that. This also disposes off the above terms of references as also the Terms of References of the Management No. 14(a) to 14(d). In fact, these Terms only reiterate what the agreement says, and the agreement is binding on both the parties.

11. **Item No. 12 :**

(a) Whether a parity in the matter of total emoluments of Aircraft Engineers shoud be maintained vis-a-vis the total emoluments of Pilots as well as Flight Engineers. If so, what should be the percentage of emoluments payable to Aircraft Engineers at the lowest grade as well as compared with the Pilots and Flight Engineers at the lowest and highest grades.

(b) Whether the Aircraft Engineer are entitled to get additional fixed Allowance of Rs. 50,000/-as a fixed allowance named as multiple fleet allowance on the same lines being paid to Pilots at Rs. 50,000/- per month and Flight Engineers Rs. 35,000/- per month– in addition to all other salaries and allowances?

11.1. Item No. 12 (a) is for maintaining parity in the matter of total emoluments of Aircraft Engineers vis-a-vis the total emoluments of Pilots as well as Flight Engineers. According to the Association, till about 1992, certain parity was maintained between the wages of Pilots, Air-craft Engineers and Flight Engineers. However, in 1993 this was disturbed because the Management entered into an Agreement with the Pilots and in 1995 the Management entered into an agreement with the Flight Engineers. This led to an agitation by the Air-craft Engineers and according to them, the Management adopted the policy of divide and rule.

11.2. The Association points out that the Indian Pilots Guild had relied on Arthur Andersen's Report. That report shows that the AMEs are rated above the Flight Engineers and below the Pilots and Co-Pilots. Accordingly the Association points out that the total emolument of Air-craft Engineers should be at 75% of the Pilots emoluments. They also submit that the PLI scheme is not satisfactory and they want a new scheme be prepared in this behalf. In that, they state that the Pilots incentive scheme is related to flying hours which means the actual utilization of air-craft, while the PLI for the Air-craft Engineers is not related on that basis.

11.3. Item No. 12 (b) is for getting certain fixed allowance. It appears that the Management has granted an additional allowance of Rs. 50,000/- to the Pilots from the year 1998 and a sum of Rs. 35,000/- to the Flight Engineers. The Association submits that the work of Aircraft Engineers is more onerous and more complicated than that of the Pilots and Flight Engineers. They also submit that the work of the Pilots and the Flight Engineers has become easier because of the computerized system, whereas the Aircraft Engineers have to read new manuals and have to carry out new methods of tests and procedures, and in any case, their work load is much more than that of the Pilots and the Flight Engineers. They have been agitating about this, but the Management has been promising to look into the same, but has not done anything for the last few years. Hence they demand that they be given a fixed allowance of Rs. 50,000/- as multi-fleet allowance and they pray that the same be given with effect from 1999.

11.4. The Management, when they filed their Statement in support of their terms of reference (M-1), they have not said anything about this, as according to them they were not aware of this term of reference filed by the Association. However, when they filed their reply (M-2) to the Statement of Claim in support of Terms of Reference framed by the Association, they denied that there could be any parity between the Pilots and Flight Engineers on the one hand and the Aircraft Engineers on the other hand. They also stated that the hourly rate of payment to the Pilots is not any incentive and the same cannot be compared with the PLI Scheme applicable to AMEs. As regards the fixed allowance given to the Pilots and Flight Engineers, they stated that that is related to their flight duties which entails outstation duties and the same is required for their

sustenance. On the other hand Aircraft Engineers have no such duties and the claim is not comparable with that of the Pilots. Hence, they deny these claims.

11.5. They have also stated that the issue on parity is also before the National Industrial Tribunal (NTB-1 of 1990) and that the demand raised by the Association is also a part of the said Reference. Hence they submit that this terms of reference cannot be taken up by me.

11.6. Thereafter, by an application dated 12th September, 2002, the Management desired to amend their Statement M-2. Though, initially the Association desired to oppose this application, in the meeting held on 27th September, 2002 Mr. Gadkari, Advocate for the Association stated that he did not desire to oppose the application. Hence the amendment was allowed. Mr. Gadkari had prepared a reply dated 27th September, 2002 which was also taken on record and the same was treated as a reply to the amendment.

11.7. The amendment is to the effect that Air India had never agreed to refer the issue of parity between Aircraft Engineers and Pilots and Flight Engineers. The Management sets out how the Association included this Term of Reference without the knowledge of the Management. Hence they contend that since they have not agreed to this Term of Refrence, it is not possible for me to consider this item of reference.

11.8. The Association, in reply points out that the Management had not taken up this contention in M-2. Secondly, the Arbitrator is bound to adjudicate the terms of reference jointly referred to by the parties under the "agreement" signed in form "C", and that it is not open to the Management to take up this contention. The Association denies that they had included this term of reference "surreptitiously" as alleged.

11.9. Before I deal with the rival contentions, I must refer to the Order dated 25th February, 2002 passed by the High Court, which led to the present Arbitration Proceedings. The relevant portion of the same is as follows :—

"2. The Parties will jointly apply to the Central Government within one week to refer all the disputes raised in the Strike Notice dated 15th February, 2002 and all disputes raised in Strike Notice dated 28th July 2001 as well as all disputes pending in conciliation before the Regional Labour Commissioner (C) Mumbai, to the Sol Arbitration of Hon'ble Mr. Justice H. Suresh (Retd.), and upon receiving such joint application the Central Government is directed to refer the said disputes to Arbitration under Section 10-A of the Industrial Disputes Act, 1947 within a period of one month. In case, the parties jointly agree before submitting the joint application to refer any additional disputes to arbitration, the joint application will also contain such other disputes which the parties have agreed to refer, and all such disputes shall be referred by the Central Government."

11.10. Admittedly the parity issue was not in the strike notice nor was it pending in conciliation. Hence the only quesiton is whether the parties have jointly agreed "before submitting the joint application" to refer this issue of parity which is an additional dispute. In my view, if one goes through the series of letters which preceded the joint application, there was no such agreement to refer this additional dispute. The first letter, after the order, is from the association, being the letter dated 28th February, 2002. The Association forwarded their specific disputes along with this letter to the Management. It did not contain this dispute in quesiton. This is followed by another letter dated 5th March, 2002 in which they include the dispute relating to "Approval to Technical Office" pending in conciliation, but inadvertently not included earlier. This is followed by the Management's letter, dated 7th March, 2002 addressed to the Association, enclosing the Terms of Reference in Form C, under I.D. Act, 1947, as prepared by the Management and signed by Mr. Ferreira, General Manager, HRD. The terms of reference are all comparable to that of the Association, as forwarded earlier. This does not include this parity issue at all.

11.11. Thereafter what happened was that the Association by its letter dated 11th March, 2002 forwarded to the Secretary, Ministry of Labour, Govt. of India, New Delhi, the form–C and consent letter of the Arbitrator. In that the Association specified matters in dispute, as per Annexure "A" and "A-1". Annexure 'A' contains the Terms of Reference as framed by the Association which includes the dispute relating to parity, and Annexure 'A-1' relates to the Terms of Reference as framed by the Management. It is an admitted position that words "A" and "A-1" is shown in form 'C' are in hand writing of Mr. Route, who is the President of the Association. This form bears the signature of both Mr. Ferreira and Mr. Rout representing employer and workmen, respectively.

11.12. It is the case of the Association that after receipt of the letter dated 7th March, 2002, they had written two letters both dated 8th March, 2002, addressed to Mr. Ferreira. These letters have been marked as Association's Document No. 53, collectively and the Association relies on the same to contend that the Management was aware of the terms of reference as framed by them under Annexure 'A'. These letters refer to an alleged conversation stating that Mr. Ferreira was contacted on 8th March, 2002 at 11.45 a.m. and that Mr. Rout wanted time for signing necessary Joint Applicaiton. According to these letters Mr. Ferreira informed Mr. Rout that no such meeting was necessary as

he had already conveyed Form 'C' signed by the Management. Mr. Ferreira was shown these two letters and he was not sure who had received the letters. Admittedly this letter was not served on the Management before 11th March, 2002. In other words the facts clearly show that the Management was not aware of the dispute relating to this parity issue till that time at all. That shows there was no agreement between the parties before making the application to the Government to refer this part of the dispute to arbitration.

11.13. Mr. Gadkari argued once that the Form 'C' was signed and sent to the Government and the Government accepts the said Form and refers the dispute to the arbitration, the Arbitrator gets jurisdiction to decide all the disputes as mentioned in the said Form 'C'. He submitted that it is not open to the Management to raise any contention to the effect that they have not consented this dispute being referred to arbitration. He also points out that the Management has not taken this contention in the first instance but they advanced this contention only by way of amendment.

11.14. The facts as narrated by me as above clearly establish that before the application was made to the Government for referring the dispute to arbitration, the parties have not agreed on this dispute being referred to the present arbitration. The Management was just not aware of this dispute having been included in any terms of reference. Hence I am not inclined to entertain and consider this dispute at all.

11.15. The Management has also pointed out that the dispute relating to parity between the Pilots and Aircrafts Engineers is pending before the National Tribunal since long. It is proper that the dispute be resolved by the said National Tribunal and not by me in this proceeding.

11.16: Even otherwise, if one goes through the submission made by the Association in fact, they are seeking modification of PLI scheme itself, on the basis that PLI scheme is not advantageous to them as compared to emoluments of Pilots and Co-pilots. I think since the Agreement dated 2/3rd May, 1996 still holds the field, these claims cannot be entertained. Hence I reject these claims made by the Association.

12. **Item No. 13 :**

Whether we should regard to long standing practice of sending the aircraft engineers to attend Seminars, Conferences, and training programs held by Manufacturer or Vendors of Aircraft Engineers and its Components, and that too in consultation with the Association and fixing the eligible name of the incumbents? Whether the action of the Management of sending only Executives and/or Aircraft Engineers (workmen) without consultation and agreement with the Association is just and proper? Whether the practice is a part of service condition of Aircraft Engineers, which cannot be altered without the due process of law should be continued?

12.1. The Association demands that the Aircraft Engineers should be sent as per the long standing contracts to attend Seminars, Conferences, training programmes held by Manufacturers, Vendors and Aircrafts. According to them the Management has been sending only Executives and/or Aircraft Engineers without consultation with the Association.

12.2. The Management points out that under the Agreement dated 2/3rd May, 1996, there is a provision in Clause No. 6 of Annexure 'C', which provides for training of the Engineers. It says that Seminars, Conferences, etc. shall be need based, but the Management shall ensure that the career progression, posting requirement and other training qualification related benefits shall not be effected. There is also an earlier Agreement which is being Document No. 12 of the Association wherein under paragraph 13 Clauses (d) and (g) it is specifically stated that the programme of training course for Aircraft Engineers shall he drawn up every year in consultation with the Association.

12.3. Under Clause 13(g), it is specifically stated that Aircraft Engineers will be sent to participate in seminars, conferences, visit facilities of other agencies or airlines etc. all for the purpose of widening their experience and knowledge.

12.4. According to me, there is no conflict between what is stated in Clause 6 of Annexure 'C' of Document No.1, and Clauses 13(a) to (g) of Document No. 12 (i.e. the Agreement dated 6th April, 1989).

12.5. The allegation appears to be that the Management is not consulting the Association while sending the members to the seminars/conferences/training programmes.

12.6. The Management's contention appears to be that Clause 6 of the Annexure 'C' of Document No.1 replaces Clause 13(d) of Document No. 12 and hence the Management is not required to consult the Association.

12.7. I do not agree with the contention of the Management. As I said that there is no conflict between the two, and I would therefore expect the Management to comply with the requirements of both the agreements. Naturally, there could be consultation with the Association, and any day, consultation and not confrontation is recommended for healthy industrial practice.

12.8. Accordingly, I would direct as above. This also disposes of the Management's Term of Reference No. 13.

13. **Management's Item No. 11:**

Whether the demand of the AIAEA for promotions to the post of Senior Aircraft Engineers in respect of Aircraft Engineers not in possession of BAMEC issued by DGCA is sustainable in law having regard to the Settlements and Agreements, including the Agreement dated April 6, 1989?

13.1. However, the Management raised an item of reference under their Terms of Reference No. 11. That Term of Reference relates to promotion to the post of Sr. Aircrafts Engineers in respect of aircraft engineers not in possession of BAMEC issued by DGCA. The Association in its Rejoinder points out that the issue is settled and an Agreement has been arrived at as mentioned which contained in the Management's letter dated 13th September, 2001 (being Association's Document No.29). The Association says that the said document is not implemented. The Association has already given a list of employees who should be considered for promotion. I can only direct the Management that they should seriously consider the question of implementation of the agreement as contained in the said letter dated 13th September, 2001.

Accordingly I Do make the Awards as under :—

Term of References	Answers
1. Re : Association's Term of Reference No. 1(a), and 1(c)	Answered in the negative and the claim is rejected.
And	
Management's Term of Nos. 1(a), 1(b), 1(c), 1(d), 1(e) and 1(f).	The above items cover these and are not required to be answered separately.
2. Re : Association's Term of Reference 2(a) and 2(b).	Answered in favour of the Association.
	(i) Parties to sit together and arrive at a new norm. Within three months time from the date this award comes into force.
	(ii) Till the new norm is arrived at, AMEs be paid under the existing formula, treating AA as open ended, and as shows in the Association's Documents No. 7. All the amounts so due be paid to the AMEs with effect from 1st January, 2001, with interest thereon at the rate of 10% p.a. till payment. These payments are subject to adjustment on the new formula coming into force.
And	
Management's Terms of Reference Nos. 2(a), 2(b), 2(c) and 2(d) and also.	As per the above, answered against the Management.
Term of Reference No.12.	Answered in the negative and the same in rejected.
3. Re : Association's Term of Reference Nos. 3(a), 3(b), and 3(c)	Answered in the negative and the claim is rejected.
And	
Management's Term of Reference Nos. 3(a), 3(b) and 3(c)	The above items covers these and accordingly not answered separately.
4. Re : Association's Term of Reference No. 4(a), 4(b)	Answered in the negative and the claim is rejected.
And	
Management's Term of Reference Nos. 4(a), 4(b), 4(c), and 4(d).	The above items cover these and hence not answered separately.
5. Re : Association's Term of Reference No. 5(a), and 5(b)	Answered in the negative and the claim is rejected.
And	
Management's Term of Reference Nos. 5(a), 5(b), and 5(c).	The above items cover these and hence not answered separately.
6. Re : Association's Term Reference No. 6(a) and 6 (b)	Answered in the negative and the claim is rejected.
And	
Management's Term of Reference Nos. 6 (a), 6 (b), and 6 (c).	The above items covers these and hence not answered separately.
7. Re : Association's Term of Reference Nos. 7(a), 7(b), 7(c) and 8(a) and 8(b).	The Management is directed to comply with the requirements of the Handbook (Document

	No.13 of the Association) and to take all steps to maintain the Rest Rooms, the toilets and thearea of work, in clean and hygienic condition. Suggested constitution of a committee of two members from each side for supervising the above work.
And	
Management's Term of Reference No. 7(a), 7(b), 7(c) and 8(a) and 8(b)	In view of the above these are not answered separately.
8. Association's Term of Reference Nos. 9 (a) and 9(b).	Answered in favour of the Association.
	Consequently, the management is directed to pay all the amounts due under the heading Certification Allowance to AMEs who are qualified from the date they have not been paid, and continue to pay as provided under Agreement dated 6th September, 1993 (being Association's Document No. 9), and all the arrears be paid with interest thereon at the rate of 10% p.a. from the date the amount was due till payment.
And	
Management's Term of Reference Nos. 9 (a), 9 (b) and 9 (c).	In view of the above, these are answered in negative.
9. Association's Term of Reference No. 10.	In view of the Statement of Mr. Talsania, as Recorded in para 9.3, no Specific answer is required.
And	
Management's Term of Reference Nos 10 (a) and 10 (b).	Disposed off as above.
10. Re : Association's Term of Reference No. 11	Answered in the negative.
And	
Management's Term of Reference Nos. 14(a), 14(b), 14(c) and 14(d)	In view of the above answer, not answered separately.
11. Association's Term of Reference Nos. 12(a) and 12(b).	Answered in the negative, but not on merits.
12. Association's Term No. 13.	The Management is required to comply with the requirements of the Agreement dated 2/3rd May, 1996 and Agreement dated 6th April, 1989.
And	
Management's Term No. 13.	In view of the above, no separate answer is required.
13. Management's Term of Reference No. 11.	The issue is settled as per the agreement dated 13th September, 2001 (Association's Document No. 29). The Management to implement the said Agreement.

14. **Re : Costs:**

There will be no order as to costs, meaning thereby each party will bear their own costs.

THIS AWARD MADE and SIGNED IN Mumbai on this 9th day of April, 2003.

JUSTICE H. SURESH (Retd.), Arbitrator

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